

COOPERATIVE AGREEMENT
between
the
NATIONAL PARK SERVICE
and
MONTGOMERY COUNTY, MARYLAND

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This Agreement is made and entered into between the UNITED STATES OF AMERICA, DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE, hereinafter referred to as the Service, and MONTGOMERY COUNTY, MARYLAND, hereinafter referred to as the County.

Article I. Background and Objectives

WHEREAS, the Service is charged with the responsibility for administering those areas in the National Park System of the United States which are located in the District of Columbia and its environs, known as the National Capital Region, including the area called Glen Echo Park; and

WHEREAS, Glen Echo Park, a unit of the National Park System located 1.5 miles northwest of Washington, D.C., in Montgomery County, Maryland, has served the region as a center for education, entertainment and cultural development for over a century; and

WHEREAS, Glen Echo Park, which has been the site of a National Chautauqua (1891), an amusement park (1899 - 1968), and an arts and cultural park (1971 - present), has served as a haven for generations of area residents and visitors; and

WHEREAS, Glen Echo Park is listed in the National Register of Historic Places, and the County fully recognizes that the Park's historic buildings are to be preserved in accordance with the Secretary of the Interior's Standards for Historic Preservation; and

WHEREAS, it is the policy of the Service to develop varied and innovative programs in the Washington metropolitan area in order to utilize to the fullest extent the facilities of the National Park System for recreational, cultural, interpretive, and educational purposes and to provide additional dimensions to the visitors's enjoyment of National Park Service areas; and

WHEREAS, this Agreement is made to implement the Modified Public Partnership Alternative identified in the Final Management Plan/Environmental Impact Statement for Glen Echo Park, issued in the Federal Register on March 9, 2001, and selected in the Record of Decision issued in the Federal Register on May 29, 2001; and

WHEREAS, implementation of the selected Modified Public Partnership Alternative will improve visitor experience, maintain the traditional uses of the Park, improve the diversity in its programs, and enhance the preservation of cultural and historic resources; and

WHEREAS, this Agreement is also made in furtherance of the Service's mission goals for Glen Echo Park; and

WHEREAS, it is a Service mission goal to have Glen Echo Park continue to function as a multi-use Park centered on the arts and humanities; and

WHEREAS, future improvements to Glen Echo Park will focus on maximizing the quality of programs offered at the Park, attracting a wide range of Park visitors, and managing the Park in a manner that allows it to be as financially solvent as possible; and

WHEREAS, it is also a Service mission goal to have Glen Echo Park operate as a high quality, multi-faceted cultural arts program that attracts a diverse audience; and

WHEREAS, this will be accomplished by attracting and retaining artists known for mastery in their medium; and

WHEREAS, Glen Echo Park serves as a venue for both aspiring and master artists to explore, develop and share their skills with students and Park visitors; and

WHEREAS, it is also a Service mission goal to have Glen Echo Park encourage exploration and participatory learning in the arts by providing a safe environment that fosters creativity where free and creative expression and an exchange of individual and collective ideas and talents flourish; and

WHEREAS, it is also a Service mission goal to have Glen Echo Park programs preserve traditional arts and respond to contemporary interests, attracting public participants from throughout the United States; and

WHEREAS, it is also a Service mission goal to have Glen Echo Park land management and conservation practices protect the integrity of the Potomac River Palisades and the water quality of the Potomac River, and

WHEREAS, Glen Echo Park provides visual arts instruction in traditional and contemporary themes, and instructors and students alike are encouraged to seek greater depth and diversity in their medium by exploring new forms of expression; and

WHEREAS, Glen Echo Park is the site of exhibits and festivals that celebrate a range of visual arts through exhibitions and demonstrations in a variety of media; and

WHEREAS, Glen Echo Park provides liberal arts instruction in both traditional and contemporary themes, and instructors and students alike are encouraged to seek greater depth and diversity in their medium by exploring new forms of performing, participatory, and liberal arts; and

WHEREAS, Glen Echo Park is the site of performances and festivals that celebrate a range of liberal and performing arts, and Park programs include social dances as well as performances in music, dance, and theater; and

WHEREAS, Glen Echo Park is the site of environmental education programs that utilize the Park's natural resources in concert with the Park's cultural resources, and interactive and hands-on programs educate the public on the significance of the natural environment and their relationship to it; and

WHEREAS, Glen Echo Park serves as a forum for bringing educational and interpretive messages to the public, using interpretive signage, waysides and exhibits, public talks, guided walks, and outreach programs; and

WHEREAS, Glen Echo Park's place in the national history is explored through interpretive tools, and major interpretive themes of the Park include the growth and development of the Chautauqua movement in the United States, the amusement park era and the popularity of trolley parks, the early 20th century development of suburban communities, the struggle for civil rights equality in the United States, and issues of historic preservation and adaptive reuse; and

WHEREAS, Glen Echo Park provides special event programming that offers opportunities for interpreting the cultural heritage of the United States to a large number of visitors through a year-round program of public lectures, seminars and forums, cultural festivals, film series, and concerts conducted by a variety of individuals and organizations; and

WHEREAS, Glen Echo Park's Dentzel Carousel provides the public with the experiences derived from riding an amusement park ride, and the carousel shall continue to be restored, maintained, and operated at a level that preserves its artisanship and ensures its historic integrity; and

WHEREAS, Glen Echo Park is managed in a manner that preserves the Park's existing scenic vistas of the Potomac River and the historic properties located adjacent to the site; and

WHEREAS, any new development at Glen Echo Park will be controlled in order to protect the aesthetic environment by minimizing the visibility of the Park structures from the Potomac River, Chesapeake and Ohio Canal, and the George Washington Memorial Parkway, and, where practical, future changes within the Park shall seek to enhance the views of the Potomac River Palisades within the Park; and

WHEREAS, Glen Echo Park operates in a manner that limits the adverse impact of its programs and activities on the surrounding communities;

NOW THEREFORE, in consideration of the mutual promises contained herein, the Service and the County enter into this Agreement.

Article II. Statement of Substantial Involvement

Substantial Federal involvement on the part of the Service is anticipated during the performance of the activities authorized under this Agreement. This involvement will include, but is not limited to, the following areas:

- A. Collaboration and/or participation in the management of the program activities carried out in performance of the terms of this Agreement.
- B. The right immediately to suspend and/or terminate activities, as provided in this Agreement, if the conditions of this Agreement are not met.
- C. The right to review and approve substantive provisions of subagreements entered into under this Agreement and grant applications made by the County or its agents pursuant to this Agreement.
- D. Substantial direct Service participation is anticipated to ensure compliance with statutory requirements.
- E. Close monitoring of the operations carried out under this Agreement.
- F. Meeting jointly with the County or its Designated Management Entity, hereinafter referred to as the DME, to review and establish priorities for the expenditure of funds from the account established for life cycle maintenance.

Article III. Authority

The Service undertakes this Agreement pursuant to the legislative authorities of section 3 of the Act of August 18, 1970 (84 Stat. 826; 16 U.S.C. § 1a-2(g)), as amended. The Service further undertakes this Agreement pursuant to the legislative authorities of the Act of August 25, 1916 (35 Stat. 353; 16 U.S.C. §§ 1, 2-4), as amended; section 2 of the Act of August 21, 1935 (49 Stat. 666; 16 U.S.C. § 462(e)), as amended; and section 101(d) [Title I] of the Act of September 30, 1996 (110 Stat. 3009-189; 16 U.S.C. § 1g). Nothing in this Agreement shall be construed as affecting the authorities of the parties or as binding the parties beyond their respective authorities.

Article IV. Statement of Work

A. The Service and the County agree as follows:

1. Assignment of Land and Government Improvements. The Service hereby assigns for use by the County during the term of this Agreement, the parcels of land and Government improvements described in Appendix A, attached hereto and incorporated herein by reference, for the conduct of the operations authorized herein. Such land and Government improvements shall hereinafter be referred to as the Premises. The Service reserves the right to withdraw such assignment or a portion thereof at any time during the term of this Agreement if, in the judgment of the Service, such withdrawal is necessary for the purpose of enhancing or protecting area resources or visitor enjoyment or safety. The Service shall not make any such withdrawal unreasonably. Any permanent withdrawal of assigned lands or improvements which are essential for conducting the operation authorized hereunder will constitute a termination of this Agreement by the Service.
2. Alcohol. No alcohol is permitted on the Premises without the express written prior authorization of the Service. The Service and the County or its DME shall develop the process for granting such authorization.
3. Appearance and Conduct of Employees. The County or its DME may be required, upon written notification by the Service, to have its employees who come into direct contact with the public wear, insofar as is practicable, a uniform or name badge by which they may be known and distinguished as the employees of the County or its DME. The County or its DME shall require its employees to exercise courtesy and consideration in their relations with the public. The County or its DME shall review the conduct of any of its employees whose actions or activities are considered by the County or its DME or the Service to be inconsistent with the proper administration of Glen Echo Park and the enjoyment and protection of Park visitors, and shall take such actions as are necessary to fully correct the situation.
4. Assignments of this Agreement. The County may not assign this Agreement, either in whole or in part, without the prior written approval of the Service.
5. Construction.
 - a. The County or its DME may construct, subject to the prior written approval of the Service, minor additions, buildings or structures determined by the Service to be necessary for support of the authorized activities of the County and otherwise to be consistent with the protection and purposes of the Park area. Any new development must be consistent with the Park's management zoning map and mission goals. Moreover,

the total development area may not exceed forty percent (40%) of the total Park area.

- b. Except with respect to historic property within the Premises, the County or its DME may undertake any improvement to, or demolition of, property within the Premises only upon written approval by the Service. The County or its DME may submit a request to make improvements upon, or to demolish, property to the Service. Upon receipt of a request to make improvements upon, or to demolish, property, the Service must respond to the request within thirty (30) days of receipt of the request; such response from the Service must either be affirmative or negative, or, in the alternative, indicate that further study is necessary before an affirmative or a negative response can be provided.

Any improvement to, or demolition of, historic property may only be approved if the Service determines that the improvement or demolition complies with the Secretary of the Interior's Standards for the Treatment of Historic Properties (36 CFR Part 68), as well as the requirements of the National Environmental Policy Act of 1969, hereinafter referred to as NEPA, codified at 42 U.S.C. §§ 4321 *et seq.*, the National Historic Preservation Act, hereinafter referred to as the NHPA, codified at 16 U.S.C. § 470f, other relevant laws, and any programmatic Memoranda of Agreement the Service may have with the Maryland State Historic Preservation Office.

- c. The Service will be constructing a new maintenance facility at the Park. The Service hereby agrees to consult with the County concerning the location and the use of such maintenance facility.

6. Environmental Protection.

a. Environmental Data, Reports, Notifications, and Approvals.

- i. Inventory of Hazardous Substances and Inventory of Waste Streams. The County or its DME shall submit to the Service, at least annually, an inventory of Federal Occupational Safety and Health Administration (OSHA) designated hazardous chemicals used and stored in the Premises by the County or its DME. The Service may prohibit the use of any OSHA hazardous chemical by the County or its DME in operations under this Agreement. The County or its DME shall obtain the Service's approval prior to using any extremely hazardous substance, as defined in the Emergency Planning and Community Right to Know Act of 1986, codified at 42 U.S.C. §§ 1101 *et seq.*, in operations under this Agreement. The County or its DME shall also submit to the

Service, at least annually, an inventory of all waste streams generated by the County or its DME under this Agreement. Such inventory shall include any documents, reports, monitoring data, manifests, and other documentation required by applicable laws regarding waste streams.

- ii. Reports. The County or its DME shall submit to the Service copies of all documents, reports, monitoring data, manifests, and other documentation required under applicable environmental laws to be submitted to regulatory agencies.
- iii. Notification of Releases. The County or its DME shall give the Service immediate written notice of any discharge, release or threatened release (as these terms are defined by applicable laws) within or at the vicinity of the Premises, of any hazardous or toxic substance, material, or waste of any kind (whether solid, semi-solid, liquid or gaseous in nature), including, without limitation, building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product.
- iv. Notice of Violation. The County or its DME shall give the Service in writing immediate notice of any written threatened or actual notice of violation from other regulatory agencies of any applicable law arising out of the activities, under this Agreement, of the County or its DME, its agents or employees.
- v. Communication with Regulatory Agencies. The County or its DME shall provide timely written advance notice to the Service of communications, including, without limitation, meetings, audits, inspections, hearings and other proceedings, between regulatory agencies and the County or its DME related to compliance with applicable laws concerning operations under this Agreement. The County or its DME shall also provide to the Service any written materials prepared or received by the County or its DME in advance of or subsequent to any such communications. The County or its DME shall allow the Service to participate in any such communications. The County or its DME shall also provide timely notice to the Service following any unplanned communications between regulatory agencies and the County or its DME.

b. Corrective Action.

- i. The County, at its sole cost and expense, or its DME, at its sole cost and expense, shall promptly control and contain any discharge, release or threatened release, as set forth in this section, or any threatened or actual violation, as set forth in this section, arising in connection with the County or its DME's operations under this Agreement, including, but not limited to, payment of any fines or penalties imposed by appropriate agencies. Following the prompt control or containment of any release, discharge or violation, the County or its DME shall take all response actions necessary to remediate the release, discharge or violation, and to protect human health and the environment.
- ii. The County or its DME shall comply with directives of the Service to clean up or remove any materials, product or by-product used, handled, stored, disposed, or transported onto or into the Premises by the County or its DME to ensure that the Premises remain in good condition.

c. Cost Recovery for the Environmental Activities of the County or its DME.

If the County or its DME does not promptly contain and remediate an unauthorized discharge or release arising out of the activities of the County or its DME, its employees, agents and contractors, as set forth in this section, or correct any environmental self-assessment finding of non-compliance, in full compliance with applicable laws, the Service may, in its sole discretion and after notice to the County or its DME, take any such action consistent with applicable laws as the Service deems necessary to abate, mitigate, remediate, or otherwise respond to such release or discharge, or take corrective action on the environmental self-assessment finding. The County or its DME shall be liable for and shall pay to the Service any costs of the Service associated with such action upon demand. Nothing in this section shall preclude the County or its DME from seeking to recover costs from a responsible third party.

d. Integrated Pest Management. All chemicals products used for pest or plant control must be approved by the Service prior to use. County or DME staff, as well as pesticide contractors with the County or its DME, shall comply with the following guidelines.

- i. The County or its DME shall be responsible for contacting the Service regarding any pest infestations or plants that pose a problem during the year.

- ii. Approval for product use and treatment is on a case by case basis. The Service will contact its Integrated Pest Management Coordinator to determine the best course of action for pest management and obtain approval for treatment.
 - iii. The Service's Integrated Pest Management Coordinator will obtain product approval or provide suggestions for alternative treatment for a particular pest problem.
 - iv. If the County or its DME obtains the Service's approval for the application of any chemical products during the calendar year, then the Pesticide Use Log provided by the Service should be completed and submitted to the Service by January 15 of the following year.
- 7. Government Improvements. The County waives any right to any possessory interest in the Government improvements assigned hereunder. Any improvements affixed to such Government improvements heretofore, or hereafter provided by the County, shall be the property of the United States. Nothing herein shall be deemed to create in the County or any of its cooperators any right, title, or interest, or any other compensable interest in the buildings or structures, or improvements to the buildings and structures, made available for their use by this Agreement.
- 8. Life Cycle Maintenance Account.
 - a. Commencing upon the effective date of this Agreement, and continuing for the term of this Agreement, the County or its DME agrees to set aside a percentage of its "gross receipts," as herein defined, on all sales and business transacted upon the Premises. The percentage amount of "gross receipts" set aside shall be in accord with the following:
 - i. During the first three years of this Agreement, the County or its DME may set aside between one percent to five percent (1% - 5%) of "gross receipts." The County or its DME shall use its best efforts in this regard.
 - ii. During the fourth year of this Agreement, the County or its DME shall set aside between one percent to five percent (1% - 5%) of "gross receipts."
 - iii. During the fifth year of this Agreement, and for all subsequent years that this Agreement is in effect, the County or its DME shall set aside five percent (5%) of "gross receipts."

- b. Such amount shall be collected by the County or its DME and shall be deposited into a Federally insured interest bearing account, designated a "Life Cycle Maintenance Account," established by the County or its DME. The funds in the Life Cycle Maintenance Account shall be used to carry out, on a project basis, repair and maintenance of the Premises that are non-recurring within a seven year time frame. Such projects may include repair or replacement of foundations, building frames, subfloors, drainage, rehabilitation of building systems, such as electrical, plumbing, built-in heating and air conditioning, roof replacement and similar projects. Such funds shall not be considered to be Federal government funds. The funds shall be deposited to this account on or before the fifteenth (15) day of February, May, August and November. All funds credited in this manner to the account shall accrue indefinitely until expended in the manner set forth in subparagraph (e) of this Article. The County or its DME shall, on or before the fifteenth (15) day of the aforementioned months during the term of this Agreement, deliver to the Service a "Statement of Sales and Business Transactions" setting forth the amount of "gross receipts" received by the County or its DME for the quarter immediately preceding the delivery of such "Statement of Sales and Business Transactions." If the County or its DME fails to make timely deposits into the Life Cycle Maintenance Account, the Service may terminate this Agreement for default or require the County to post a bond in an amount equal to the estimated annual Life Cycle Maintenance Account allocation, based on the preceding year's gross receipts.
- c. The County or its DME shall, on or before thirty (30) days after the expiration of each fiscal year during the term of this Agreement, deliver to the Service an annual "Statement of Sales and Business Transactions" setting forth the amount of "gross receipts" made by the County or its DME each and every month for the fiscal year immediately preceding the delivery of such "Statement of Sales and Business Transactions."
- d. The Service and the County, or its DME, shall meet quarterly on or before the last day of February, May, August and November to jointly review and establish priorities for the expenditure of funds from the Life Cycle Maintenance Account. Additional meetings may be held at the request of either party.
- e. The balance in the Life Cycle Maintenance Account shall be available for projects in accordance with the Life Cycle Maintenance Account's purpose. Expenditure of funds from this account shall be made by the County or its DME only upon the prior written concurrence of the Service. In this instance, prior written concurrence means approval given for the project and the dollar amount to be spent on such project. It does not mean prior written approval for each check to be issued by the County or

its DME. For all expenditures made for each project from the account, the County or its DME shall maintain auditable records including invoices, billings, and canceled checks.

- f. The term "gross receipts," as used herein, shall mean the total amount received by the County or its DME from activities covered by this Agreement, including, but not limited to:
 - i. The rental of facilities and/or accommodations;
 - ii. Donations in lieu of payment for the use of facilities and/or accommodations. If, however, the value of a donation made in lieu of payment for the use of facilities and/or accommodations exceeds the established fee for such use, then the excess value shall be treated as a pure donation and shall not be subject to the "gross receipts" calculation;
 - iii. Sales of goods and services for cash or credit, including sales of tickets to performances and sales through vending machines and other coin-operated devices, other than telephones. Only revenues actually received by the County or its DME from coin-operated telephones shall be included in gross receipts; and
 - iv. Commissions earned on contracts with third parties operating in the facilities included in this Agreement.

Excluded from "gross receipts" are cash discounts on purchases; cash discounts on sales; interest on monies loaned or in bank accounts; income from investments; sales and excise taxes that are added as separate charges to approved sales prices, provided that the amount excluded shall not exceed the amount actually due or paid government agencies; revenue generated from the operation of the Park's carousel; and monies received in the form of grants, donations, bequests or gifts.

- g. In computing "gross receipts" for any purpose of this Agreement, the County agrees that its accounts will be kept in such a manner that there will be no diversion or concealment of income in the operations authorized hereunder by any means of arrangements for the procurement of equipment, merchandise, supplies, or services from sources controlled by or under common ownership with the County, or by any other device.
- h. After each year of operation of the Life Cycle Maintenance Account, the Service and the County or its DME shall jointly review their experiences in the management of this account and the requirements of this Article.

Such review shall occur within ninety (90) days of each anniversary of the operation of the Life Cycle Maintenance Account. Any changes to the requirements of this Article shall be by amendments to this Agreement and shall require the concurrence of both the Service and the County.

- i. Projects paid for with funds from the Life Cycle Maintenance Account will not include routine, operational maintenance of facilities or housekeeping and groundskeeping activities. Nothing in this Article shall lessen the responsibility of the County or its DME to carry out maintenance as otherwise required by this Agreement from funds exclusive of the funds contained in the Life Cycle Maintenance Account.
- j. The County or its DME shall have no ownership or other compensable interest in improvements made from funds from the Life Cycle Maintenance Account.
- k. Upon expiration or termination of this Agreement, for any reason, the unexpended balance remaining in the Life Cycle Maintenance Account shall, at the direction of the Service, be expended by the County or its DME for approved projects, transferred to a successor operator, or remitted to the Service in such a manner that payment shall be received by the Service within thirty (30) days after the last day of the County's operation under this Agreement.

9. Maintenance.

- a. The County or its DME shall physically maintain and repair all facilities used in the operations hereunder, including maintenance of assigned structures and all necessary housekeeping activities associated with the operations to the satisfaction of the Service. Thus, the County or its DME is responsible for building maintenance, life-cycle maintenance, and custodial services within the Premises. In order that a high standard of physical appearance, operations, repair and maintenance be maintained, appropriate inspections will be carried out jointly by the Service and the County.

The operational and maintenance responsibilities of both parties with respect to the assigned facilities are further detailed in a Maintenance Agreement, Appendix B, attached hereto and incorporated herein by reference. Appendix B will be subject to review during January of each year. Proposals for reassignment of responsibilities must be presented to the Service in writing no later than December 1 of each year.

- b. The County or its DME may make such modifications to Government improvements as are necessary for the operations required hereunder,

subject to the prior written approval by the Service of the location, plans, and specifications thereof. The Service may prescribe the form and contents of the application for such approval. In order to receive the Service's approval, such plans and specifications must meet the requirements of NEPA, the NHPA, and other relevant laws.

- c. Should the County or its DME contract for any approved construction work, the contractor doing the work may, at the discretion of the Service, be required to file a performance bond in an amount sufficient to secure adequate fulfillment of the contract and compliance with the terms of this Agreement. The County or its DME shall provide the Service with a copy of said bond. Said contractor will also be required to abide by the non-discrimination provisions of this Agreement.
 - d. In the event of damage to or destruction of the buildings and facilities assigned for the use of the County or its DME, in whole or in part, by any cause whatsoever, nothing herein contained shall be deemed to require the Service to replace or repair the buildings or facilities. If the Service determines in writing after consultation with the County or its DME that damage to buildings or portions thereof renders such buildings unsuitable for continued use by the County or its DME, the Service shall assume sole control over such buildings or portions thereof. The parties shall endeavor to reach mutually satisfactory resolution of the matters considered as part of the consultation so as to ensure that the Premises retain an attractive appearance. When circumstances dictate, such consultations shall include consideration of whether the affected buildings or facilities should be razed. The parties recognize, however, that the Service may not have funds immediately available for the purpose of razing such buildings or facilities.
 - e. The Service and the County or its DME shall jointly develop a plan concerning the standards to which the Premises will be maintained.
10. Merchandise, Services, and Activities. The Service reserves the right to determine and control the nature and type of merchandise, services, and activities which may be sold or furnished by the County or its authorized cooperators. The Service shall inform the County and its DME in writing whenever the Service believes that a sales item, art work, display or other object is inappropriate for presentation. The Service shall likewise inform the County and its DME in writing whenever the Service believes an activity to be inappropriate. The County or its DME shall assist the Service in the removal of any sales items, art work, displays or other objects judged by the Service to be inappropriate for presentation in a unit of the National Park System. The County or its DME shall likewise assist the Service in the cancellation of any activities judged by the Service to be inappropriate within a unit of the National Park System.

11. Obligation of Federal Funds. The Service may, if the Superintendent of George Washington Memorial Parkway so chooses and funds are available, obligate Federal funds for Glen Echo Park.
12. Parks and History Association. Upon the execution of this Agreement, the Service shall assign a portion of its interest in the August 9, 1999, agreement, as supplemented, between the Service and the Parks and History Association concerning Glen Echo Park to the County or its DME. The parties agree that this assignment will fulfill the obligation of the County under Article IV.C.3.a of this Agreement concerning the operation, routine maintenance, and staffing of the carousel.
13. Pledging or Encumbrance of this Agreement. The County or its DME may pledge or encumber this Agreement as security, provided that any pledge or encumbrance of the Agreement and the proposed holder of the pledge or encumbrance must be approved in advance by the Service and that a pledge or encumbrance may only grant the holder the right, in the event of a foreclosure, to assume the responsibilities of the County under this Agreement or to select a new authorized cooperator subject to the approval of the Service. Pledges or encumbrances may not grant the holder the right to alter or amend in any manner the terms of this Agreement.
14. Public Programming. The County or its DME shall devote the Premises, as a matter of policy, primarily to public programs.
15. Safety
 - a. The Service and the County shall, at least once per annum, jointly conduct inspections of the Premises with the Service's fire inspectors.
 - b. The Service and the County shall, at least once per annum, jointly conduct a formal maintenance inspection of the Premises with the Chief of Maintenance for the George Washington Memorial Parkway.
 - c. The Service and the County shall, at least once per annum, jointly conduct a public and employee safety review of the Premises with the Safety Officer for the George Washington Memorial Parkway.
 - d. The County shall develop, implement, and maintain a written Documented Safety and Loss Control Program approved by the Service. Such program shall include the following:
 - i. Procedures to identify and correct safety deficiencies; and

- ii. Measures to assure safety awareness, training in hazard recognition, reporting procedures and prevention.

The program will be revised quarterly and will be coordinated with the Service's Documented Safety Program. On-site evaluations shall be conducted by the Service and the County, and shall include a review of the program as well as inspections of selected sites and equipment for the purpose of monitoring the effectiveness of the County's inspection program.

- e. The County or its DME shall, in a timely manner, correct any deficiencies found by the inspections conducted by the Service and the County.

16. Spanish Ballroom.

- a. Social dance is a major program element and will be accommodated in the Spanish Ballroom at its 2001 level. Time allocation in the ballroom for this activity will be in accordance with the 2001 schedule. The County or its DME will schedule all dance activities at least one year in advance. It is understood that some weekends during the calendar year, as in past years, the facility shall, for the good of the Park, be devoted to activities other than social dance in the Spanish Ballroom. Any expansion of the social dance program will compete with other Park uses for the facility. It is understood, however, that during the times the Spanish Ballroom is not being used for social dance, it will be used for other purposes as deemed appropriate by the County or its DME and consistent with the Park's mission goals.
- b. The Service will commit to operation of the Spanish Ballroom for 15 years from the date on which the State of Maryland releases funds associated with the State of Maryland loan, known as the Glen Echo Park Foundation Loan of 1989, Chapter 234 of the Acts of 1989, as amended by Chapter 393, Acts of 1991, Chapter 173, Acts of 1993, Chapter 328, Acts of 1995 and further amended by Chapter 333, Acts of 1996.

17. Subagreements.

- a. The Service shall have the right to review and approve substantive provisions of any subagreements entered into under this Agreement.
- b. No subagreements shall be issued by the County or its DME for any purpose for a term to exceed that of this Agreement nor shall any subagreement contain a renewal rights clause to exceed the term of this Agreement.

- c. The Service and the County or its DME shall agree upon the language of each category of standard form subagreement the County or its DME intends to issue under this Agreement. All such subagreements shall clearly detail the terms of the occupancy, the fees charged, the responsibilities of the group or individual, state the conditions under which the subagreement may be terminated, specify the appeal procedures that will exist upon notice of termination, and prohibit the subletting or use of any space by any individual or organization for any purpose unless such use is specifically authorized in the subagreement. The agreements shall also provide for an improved revenue stream, and shall expressly state that the parties to the subagreement shall implement the Park's mission goals. Once the Service and the County or its DME have reached agreement, then the County or its DME may issue such subagreements without further review by the Service. Deviations from the agreed upon language of a standard form subagreement will, however, require the prior written approval of the Service.
 - d. Each subagreement shall be revocable for violation of any of the terms thereof or at the discretion of the County or its DME. In the event of the revocation of a subagreement under this paragraph, and the refusal of the holder of a revoked subagreement to vacate the permitted area, the Service agrees, upon written notification by the County, to enforce any appropriate provision of any statute applicable to Glen Echo Park and regulations thereunder, provided that the written notification of the County shall contain a determination by the County that it cannot reasonably enforce the termination, and shall indicate the specific steps the County or its DME has undertaken to seek compliance and the results thereof.
 - e. The County or its DME shall ensure that no modification, alteration, or construction work is performed by any group or individual on the Premises assigned to the County under this Agreement without the prior written approval of the Service.
18. Suspension and/or Termination of Activities. The Service shall have the right to immediately suspend and/or terminate activities, as provided in this Agreement, if the conditions of this Agreement are not met. No compensation of any nature shall be due the County in the event of a suspension of operations, including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the suspension.
19. Technical Assistance. Upon the request of the County, the Service agrees, subject to the availability of staff and funds, to provide such technical and other assistance to the County as the Service may be able and authorized to provide under applicable laws, insofar as the assistance relates to the proper performance of the obligations of the County under this Agreement.

20. Transportation

- a. The Service and the County or its DME shall encourage use of mass transportation, special event shuttles, and/or car-pooling to Glen Echo Park by employees and event participants. The Service and the County hereby agree to work together to achieve the same.
- b. The County or its DME shall identify additional overflow parking space, when an event will require more parking spaces than are available in the parking lot and the presently available overflow areas within the parking lot area. The present overflow area on the grass within the Park is depicted in the map set forth in Appendix A.
- c. Upon prior request from the County or its DME, the Service will be responsible for traffic flow when the parking lot is full.
- d. There may be no more than five (5) events per annum requiring off-site overflow parking.

21. Utilities.

- a. The Service shall, in accordance with Article VI.B of the September 13, 1999, Cooperative Agreement between the United States, the County, and the State of Maryland, hereinafter referred to as the 1999 Cooperative Agreement, attached hereto and incorporated herein by reference, complete the installation of major utilities within the Park with previously incorporated funds.
- b. The County or its DME may use the utilities serving the Premises. There is no representation as to the condition of said services, and the Service assumes no responsibility to improve these services except as set forth in the 1999 Cooperative Agreement. It is understood that these utilities are provided hereunder to the County or its DME and may be used by the County or its DME, at the expense of the County or its DME.
- c. The Service shall pay the County or its DME for the share of utility costs incurred by the Service. The Service shall work with the County or its DME to determine the portion of the Service's obligation for non-metered uses.
- d. The County or its DME shall be responsible for the payment of all utility costs by direct payment to the provider or by payment to the Service for reimbursement of utility costs not billed directly to the County or its DME. Payment to the Service shall be at reasonable rates to be fixed by the

Service, which shall equal the actual cost of providing the utility or service.

- e. Except as set forth in the 1999 Cooperative Agreement, the installation of any required utility meters shall be the responsibility of the County or its DME.
- f. Should any necessary utility service not be available or sufficient to meet operational requirements, the County or its DME may, with the written approval of the Service and under such requirements as may be prescribed by the Service, secure the same at its own expense.

B. The Service agrees to:

1. Carousel.

- a. Assume responsibility for the restoration of the carousel, including, but not limited to, the band organ, ceiling panels, drum panels, rounding boards, turn table, animals, and mechanical system of the carousel. As specified in Appendix B, the County shall assume responsibility for the exterior housing which encloses the carousel; the County's responsibility shall not, however, extend to the carousel's roof.
- b. Review and, when in the view of the Service appropriate, approve the schedule of activities and fee structure for the carousel. Such approval shall not be unreasonably withheld.
- c. The Service reserves the right to reduce the carousel's hours of operation or to close the carousel temporarily if the Service deems such action necessary to preserve the carousel. The Service shall not invoke this right unreasonably.

2. Concessions.

- a. Ensure that all concession activities occurring at Glen Echo Park conform to the National Park Service Concessions Management Improvement Act of 1998, Pub. L. No. 105-391 (Nov. 13, 1998), codified at 16 U.S.C. §§ 5951 et seq.
- b. Maintain and monitor the existing concession contract. Guest Services, Inc., holds the present concession contract for Glen Echo Park by means of Concession Contract No. CC300060002, which expires December 31, 2010.

- c. Review for approval the type and price of all souvenirs proposed to be sold at Glen Echo Park. No souvenir may be sold at Glen Echo Park without first having been approved by the Service.
 - d. Ensure that the concessions offered at Glen Echo Park meet the needs of the programs and activities occurring at the Park as defined by the County or its DME.
 - e. Ensure that the concessioner for Glen Echo Park meets all requirements of the United States Public Health Service with respect to food service and sanitation. The Service will further ensure that the concessioner's agents and employees are trained in the proper handling and preparation of food , and that all food service facilities and operations meet the design, construction, and operational criteria recommended by the United States Public Health Service.
3. Cooperating Association. Ensure compliance with Director's Order No. 32: Cooperating Associations, which is incorporated herein by reference. Director's Order No. 32 shall control the Service's relationships with any and all cooperating associations at Glen Echo Park. A cooperating association must obtain Service approval prior to selling any item. Such approval will be issued in accordance with the Scope of Sales Guideline, attached hereto and incorporated herein by reference as Appendix C.
4. Information and Interpretation.
- a. Provide a visitor information station in the North Arcade where visitors will find general information and exhibits on Glen Echo Park's history and a small theater. The visitor information station will be the starting point for all interpretive tours and programs and will be staffed by the Service in accordance with an annual operations plan to be developed by the Service and the County or its DME.
 - b. Provide regular interpretive programs, including walking tours on the history of Glen Echo Park. Provide interpretive media, including an information kiosk, a brochure rack, and a video depicting the history of Glen Echo Park.
 - c. Conduct research and oral histories concerning the Glen Echo Park.
 - d. Provide maintenance, documentation, and curatorial care of the Park artifact collection.

5. Law Enforcement and Traffic Control. The Service shall provide appropriate levels of law enforcement and traffic control in the Park and shall undertake to enforce, as the Service deems appropriate, all applicable laws and regulations pertaining to the conduct of persons in the Park.
6. Liaison to Non-Profit Board of Directors. Act as a liaison to the non-profit Board of Directors or similar entity created by the County to conduct the day-to-day operations on the Premises.
7. Permits
 - a. In accordance with 36 CFR § 7.96, the Service has exclusive authority to issue permits concerning First Amendment activities at Glen Echo Park. This authority is retained by the Service. This Agreement provides no authority to the County with respect to the permitting of First Amendment activities at the Park.
 - b. The Service shall:
 - i. Continue to maintain its existing permits with: (1) the Potomac Electric Power Company for the building currently known as the stables (Substation No. 15), and (2) the U.S. Army Corps of Engineers for the property adjacent to the aqueduct; and
 - ii. Seek future permits for the same.
 - c. Commercial Filming.
 - i. All commercial filming activities at Glen Echo Park require the prior approval of the Service. The Service shall respond to a request to conduct such commercial filming activities within thirty (30) days of receipt of the request.
 - ii. The Service will contribute a percentage of the commercial filming fees it collects at Glen Echo Park, exclusive of fees recovered for the Service's administrative and personnel cost, to the County or its DME. The County or its DME shall expend such monies on expenditures related to the operations authorized hereunder.
 - iii. The Service reserves the right to amend the language of this Agreement concerning commercial filming in accordance with its regulations, the promulgation of which is currently pending.

8. Resource Protection.

- a. Ensure compliance with section 106 of the NHPA, including consultation with the Maryland State Historic Preservation Officer.
- b. Review for approval any proposed demolition of non-contributing structures located within the Park's Historic District. No such demolition may occur without the prior written approval of the Service.
- c. Conduct any and all archaeological surveys at the Park.
- d. Prepare natural and cultural resource compliance documentation for any proposed new development or any proposed change to the Park's Historic District.
- e. Ensure compliance with the NEPA.

9. Services and Program Presentation. Authorize the County or its DME, during the term of this Agreement, to develop, maintain, and administer a recreational and education program within the Premises.

10. Signage

- a. Install and maintain wayside signage within the Premises.
- b. Install and maintain, as appropriate for direction and information, exterior signs located outside the boundaries of the Premises.

C. The County agrees, on behalf of itself and its DME, to:

- 1. Adherence to Guidelines. Develop, maintain, and administer programs and services occurring on the Premises in accordance with the guidelines of the Service, including, but not limited to, NEPA and the NHPA.
- 2. Awareness of Agreement. Require all individuals, groups, and organizations, hereinafter referred to as cooperators, who provide programs and services in conjunction with or on behalf of the County under this Agreement, to be aware of and to agree to abide by all conditions set forth in this Agreement.
- 3. Carousel.
 - a. Assume responsibility for the operation, routine maintenance, and staffing of the carousel at Glen Echo Park. Due to the fragile nature of the carousel, operation of the carousel shall be limited to a total of four (4) days per week, during appropriate weather conditions, from May 1 through

September 30. Operation during those select four days is further restricted as follows: four (4) hours per day for two (2) of the four (4) days of operation per week, and seven and one-half (7.5) hours per day for the other two (2) days of the four (4) days of operation per week. The carousel may also be operated on another ten (10) occasions, provided no single occasion shall exceed more than four (4) hours of use. No deviation from this operation schedule may occur without the prior approval of the Service.

- b. Submit the carousel for annual state inspection. Such inspection is required prior to the opening of each carousel season. In preparation of such state inspection, the County will ensure that the condition of the carousel is sufficient to pass state inspection. If the carousel is not in a condition to pass state inspection, then the County will correct any identified deficiencies prior to such inspection. If the carousel fails to pass state inspection, then the County will take corrective action to rectify the deficiencies that caused the carousel to fail state inspection. Any such corrective action shall be in compliance with section 106 of the NHPA.
- c. Establish a fee structure for use of the carousel. Such fee structure shall be subject to the prior approval of the Service.
- d. Maintain and test, at least once per annum, the fire suppression system, security alarm, and fire detection alarm that the Service has installed at the carousel.
- e. Deposit at least twenty percent (20%) of the annual gross revenue generated from the operation of the carousel into an interest-bearing account controlled by the County or its DME. The monies placed in, and generated by, this interest-bearing account shall be dedicated to the restoration and maintenance of the carousel.

4. Community Relations.

- a. Minimize impact of events and programming on adjoining communities through scheduling and public transportation improvements.
- b. Obtain the prior approval of the Service before making use of the Federal property bounded by Tulane, Bowdoin, and Oberlin Avenues, as depicted on Figure 3-4 of the Final Management Plan/Environmental Impact Statement for Glen Echo Park, issued by the Service in February 2001.

5. Concessions.

- a. Provide the Service's concessioner with an advance schedule of programs occurring in the Park and the anticipated number of program participants, so that the concessioner will be prepared with a sufficient amount of food and refreshments to meet the anticipated need. The Service's current concessioner for Glen Echo Park is Guest Services Incorporated, otherwise known as GSI. With respect to catered events, notice should be given to the concessioner a minimum of two (2) weeks prior to such event. With respect to major public events, notice should be given to the concessioner a minimum of thirty (30) calendar days prior to such event.
- b. Ask the Service to negotiate with its concessioner with respect to any foods or refreshments the County would like the concessioner to offer at the Park.

6. Cooperating Associations.

- a. The County or its DME may operate and staff the carousel and the store at Glen Echo Park, and may also supply inventory for the store. As such, the County or its DME would be the Cooperating Association with respect to the carousel and the store.
- b. Oversee the sale of art by cooperating associations. Such oversight shall be in conjunction with the Service's role under Director's Order No. 32: Cooperating Associations.
- c. Oversee the sale of educational materials by cooperating associations. Such oversight shall be in conjunction with the Service's role under Director's Order No. 32: Cooperating Associations.

7. Copyright. Assume responsibility for assuring that copyright requirements are met with respect to performances occurring at Glen Echo Park. The United States will be held harmless against any liabilities arising from copyright infringement.

8. Development, Maintenance, and Administration of Premises. Develop, maintain, and administer the Premises in cooperation with the Service. With respect to programmatic details, the County or its DME shall:

- a. Develop programs and activities consistent with the Service's goals for Glen Echo Park;
- b. Improve the diversity of program offerings and program participants;

- c. Collect fees for program offerings, subject to the prior approval of the Service.
- 9. Funding. The County or its DME may seek funding from private foundations, individuals, corporations, and Federal, state, and county Governments in connection with the development, maintenance, and administration of programs and services occurring on the Premises.
- 10. Non-Profit Board of Directors. Designate a non-profit organization that will serve as the County's DME to conduct the day-to-day operations on the Premises.
- 11. Personnel. Provide all personnel necessary for the operation of its activities under this Agreement.
- 12. Public Participation. Provide the opportunity for public participation in a wide variety of affordable and accessible recreational and educational activities with both wide popular appeal and specialized appeal to different ethnic, age, cultural, and educational groups.
- 13. Resource Protection. Enhance the protection and preservation of cultural and historical resources at Glen Echo Park through the creation of an improved revenue structure, thereby making more funds available for such protection and preservation.
- 14. Security.
 - a. Secure, electronically or otherwise, all buildings, equipment, and facilities on the Premises. This includes, but is not limited to, a final check at the end of each day and each event to ensure that the lights are turned off, the doors are locked, the water is turned off, the alarm system is properly set, etc. If a law enforcement problem is encountered, the County or its DME shall contact the United States Park Police on 202/619-7310.
 - b. Develop, implement, and maintain a written Crime Prevention/Physical Security Plan approved by the Service. Such plan shall identify responsibilities for daily securing of buildings, access to buildings and assignment of keys, frequency of security patrols, emergency contact, etc.
 - c. Provide, if necessary in the collective opinion of the Service and the County or its DME, additional unarmed security for special events and programs extending beyond the normally prescribed hours. Any unarmed security provided must be approved by the United States Park Police, in writing, prior to being used.
- 15. Signage. Design a uniform signage plan for the Premises. Such plan shall be subject to the prior approval of the Service.

Article V. Term of Agreement

Unless earlier terminated by operation of the terms of this Agreement or by agreement of the parties in writing, this Agreement shall expire fifteen (15) years from its effective date. Prior to its expiration, this Agreement shall be renewable upon the mutual consent of the parties for an additional term of five (5) years. The effective date of this Agreement is the date of the last signature affixed hereto.

Article VI. Key Officials

The key officials specified in this Agreement are considered to be essential to ensure maximum coordination and communication between the parties and the work being performed. Upon written notice, either party may designate an alternate to act in place of the designated key official, in an emergency or otherwise. Any notice which the parties may desire or may be required hereunder to give or deliver to the other party shall be deemed sufficiently given or delivered, if in writing, and sent by registered or certified mail, return receipt requested, first class, postage prepaid, addressed to the appropriate key contacts set forth below, and the time of the delivery of such notice shall be deemed to be the time when the same is so mailed.

A. The key contact for the Service is:

Superintendent
George Washington Memorial Parkway
c/o Turkey Run Headquarters
McLean, Virginia 22101

e-mail: GWMP_Superintendent@nps.gov

voice: 703/289-2500
fax: 703/289-2598

B. The key contact for the County is:

Director
Bethesda Chevy Chase Regional Services Center
4805 Edgemoor Lane
Bethesda, Maryland 20814

e-mail: Deborah.Snead@co.mo.md.us

voice: 301/986-4325
fax: 301/657-0607

Article VII. Award and Payment

Not applicable.

Article IV.A.11 of this Agreement does, however, provide that the Service may, if the Superintendent of George Washington Memorial Parkway so chooses and funds are available, obligate Federal funds for Glen Echo Park. In such a circumstance, the parties shall execute an amendment to this Agreement specifying the chargeable appropriation, the amount of award, the type of disbursement, frequency of payments, and the address of the Service's Contracting Officer.

Article IV.B.7.c.ii of this Agreement likewise provides that the Service will contribute a percentage of the commercial filming fees it collects at Glen Echo Park, exclusive of fees recovered for the Service's administrative and personnel cost, to the County or its DME. In such a circumstance, the parties shall execute an amendment to this Agreement specifying the chargeable appropriation, the amount of award, the type of disbursement, frequency of payments, and the address of the Service's Contracting Officer.

Article VIII. Prior Approval

This Agreement identifies numerous instances where the prior approval of the Service is required. For example, the Service's prior approval is required with respect to alcohol, as set forth in Article IV.A.2; assignments of this Agreement, as set forth in Article IV.A.4; construction, as set forth in Article IV.A.5; environmental protection, as set forth in Article IV.A.6; expenditures from the Life Cycle Maintenance Account, as set forth in Article IV.A.8; maintenance, as set forth in Article IV.A.9; permits, as set forth in Article IV.B.7; pledging or encumbering this Agreement, as set forth in Article IV.A.13; subagreements, as set forth in Article IV.A.17; demolition of non-contributing structures located within the Park's Historic District, as set forth in Article IV.B.8; deviation from the fee structure and operation schedule for the carousel, as set forth in Article IV.C.3; the use of Federal property bounded by Tulane, Bowdoin and Oberlin Avenues, as set forth in Article IV.C.4; the collection of fees, as set forth in Article IV.C.8; and the signage plan, as set forth in Article IV.C.15.

Article IX. Reports and/or Deliverables

- A. The County or its DME shall provide the Service with an SF-269, financial status report, a copy of which is attached hereto and incorporated herein, audited by an independent certified public accountant, annually, prior to each anniversary date of this Agreement.
- B. The County or its DME shall provide the Service with visitation figures on a monthly basis.
- C. Annual Progress Report. The County or its DME shall provide the Service with an annual report, beginning twelve (12) months after the effective date of this Agreement, and every twelve (12) months thereafter. Each annual progress report shall include:

1. A summary of the overall activities occurring on the Premises, and description of the programs and services offered in furtherance of this Agreement.
 2. Goals and objectives for the forthcoming year.
 3. Facility improvements.
 4. Personnel/organization changes.
 5. Fundraising activities.
 6. Any problems or favorable or unusual developments.
 7. Other information pertinent to this Agreement, as may be required by the Service.
- D. The County shall immediately notify the Service of any developments that significantly affect the activities contemplated by this Agreement. The County shall notify the Service of any difficulties or delays that materially impair the County's ability to meet the objectives of this Agreement. In notifying the Service, the County shall describe what action the County has taken or is considering taking to address the situation and what assistance, if any, the County needs to address the situation.

Article X. Modification and Termination

- A. Both the Service and the County may suggest revisions and amendments to this Agreement. This Agreement shall not be revised or amended in any manner whatsoever unless the revision or amendment is in writing, and is mutually agreed upon by the Service and the County.
- B. If either party fails to observe any of the terms and conditions of this Agreement, the other party may terminate this Agreement in whole or in part for default without any legal process whatsoever by giving sixty (60) days written notice of termination, effective at the end of the sixty (60) day period.
- C. This Agreement may be terminated in whole or in part by the mutual written consent of the parties, in which case the two parties shall agree upon the termination conditions, including the effective date, and, in the case of partial termination, the portion to be terminated.
- D. Either the Service or the County may, without any legal process whatsoever, terminate this Agreement for the respective convenience of the United States or the County when it is in the best interest of the public to do so, in which case the terminating party shall notify the other party in writing within five (5) days following the termination.
- E. In the case of a termination, the Service shall not be liable for any anticipatory profits, lost income, lost wages, or other monies which may be claimed.

- F. To avoid interruption of services to the public upon the expiration or termination of this Agreement for any reason, the County, upon the request of the Service, shall:
1. Continue to conduct the operations authorized hereunder under the terms and conditions of this Agreement for a reasonable period of time, as determined by the Service, to allow the Service to select a successor; or
 2. Consent to the use by a temporary operator, designated by the Service, of the County's improvements and personal property, if any, not including current or intangible assets, used in the operations authorized hereunder upon fair terms and conditions. In the event the Service uses a temporary operator, the County shall not be liable for any expenses associated with the temporary operator, including, but not limited to, anticipatory profits, lost income, lost wages, or other monies which may be claimed.
- G. Upon termination of this Agreement for any reason, the County shall, at the County's expense, promptly vacate the Premises, remove all of County's personal property, repair any injury occasioned by installation or removal of such property, and ensure that the Government land and Government improvements assigned herein are in as good condition as they were at the beginning of the term of this Agreement, reasonable wear and tear excepted. In the event of the non-removal of all temporary and movable improvements and personal property from the Premises, the remaining property shall become the property of the Service without any obligation to pay thereof. In the event the Service is required to remove any property, the County shall reimburse the Service for the cost of such removal.
- H. As agreed in the 1999 Cooperative Agreement, in the event that the Federal government should decide or propose to deaccession Glen Echo Park, or a substantial portion thereof, within fifteen (15) years from the final payment or input of contributions or cost-sharing monies made pursuant to such Cooperative Agreement, the Service shall take the following actions:
1. Promptly notify the County of such decision or proposal; and
 2. Promptly provide the County with an opportunity to meet with the Service to discuss the ramifications of deaccession and how to proceed following such deaccession.

Article XI. General and Special Provisions

A. General Provisions.

1. OMB Circulars and Other Regulations. The following OMB Circulars and other regulations are attached hereto as Appendix E and incorporated herein by reference:

- a. OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments."
- b. OMB Circular A-97, "Provisions for Specialized and Technical Services to State and Local Governments."
- c. OMB Circular A-102, as codified by 43 C.F.R. Part 12, Subpart C, "Uniform Administrative Requirements for Grants-in-Aid to State Governments."
- d. OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
- e. FAR Clause 52.203-12, Paragraphs (a) and (b), "Limitation on Payments to Influence Certain Federal Transactions."

As the documents referenced in Article XI.A.1.(a) - (e) are updated, the new documents will take precedence over the old.

- 2. Anti-Deficiency Act. Pursuant to the Anti-Deficiency Act, 31 U.S.C. § 1341(a)(1), as amended, nothing herein contained shall be construed as binding the United States to expend in any one fiscal year any sum in excess of appropriations made by the United States Congress for this purpose, or to involve the United States in any contract or other obligation for the further expenditure of money in excess of such appropriations.

3. Liability Provision.

- a. The parties accept responsibility for any property damage, injury, or death caused by the acts or omissions of their respective employees, acting within the scope of their employment, to the fullest extent permitted by law. To the extent work is to be provided by a non-governmental entities or persons, the County will require that entity or person to:
 - i. Procure public and employee liability insurance from a responsible company or companies with a minimum limitation of One Million Dollars (\$1,000,000) per person for any one claim, and an aggregate limitation of Three Million Dollars (\$3,000,000) for any number of claims arising from any one incident. The policies shall name the United States as an additional insured, shall specify that the insured shall have no right of subrogation against the United States for payments of any premiums or deductibles due thereunder, and shall specify that the insurance shall be assumed by, be for the account of, and be at the insured's sole risk. Prior to

beginning the work authorized herein, the contractor shall provide the Service with confirmation of such insurance coverage; and

- ii. Pay the United States the full value for all damages to the lands or other property of the United States caused by such person or organization, its representatives, or employees; and
- iii. Indemnify, save and hold harmless, and defend the United States against all fines, claims, damages, losses, judgments, and expenses arising out of, or from, any omission or activity of such person organization, its representatives, or employees.

- b. The County shall ensure that all authorized cooperators acting under the provisions of subagreements shall carry insurance as specified by the Service during the course of the cooperators's activities occurring within the assigned area under this Agreement.
- c. The use of insurance proceeds for repair or replacement of Federally owned government buildings or structures shall not alter their character as Federally owned government buildings or structures and shall not provide any other party with a compensable interest in therein.

4. Lobbying Prohibition. The parties shall abide by the provisions of 18 U.S.C. § 1913, which states:

No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member of Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business.

Whoever, being an officer or employee of the United States or of any department or agency thereof, violates or attempts to violate this section, shall be fined under this title or

imprisoned not more than one year, or both; and after notice and hearing by the superior officer vested with the power of removing him, shall be removed from office or employment.

5. Non-Discrimination. The parties shall abide by the provisions of Executive Order 11246, as amended, and shall be in compliance with the requirements of Title VI of the Civil Rights Act of 1964, codified at 42 U.S.C. §§ 2000d *et seq.*, as amended; Title V, Section 504 of the Rehabilitation Act of 1973, codified at 29 U.S.C. § 794, as amended; the Age Discrimination Act of 1975, codified at 42 U.S.C. §§ 6101 *et seq.*, as amended; and with all other Federal laws and regulations prohibiting discrimination on grounds of race, color, sexual orientation, national origin, disabilities, religion, age, or sex.
6. Minority Business Enterprise Development. Executive Order No. 12432. It is national policy to award a fair share of contracts to small and minority firms. The Service is strongly committed to the objectives of this policy and encourages all recipients of its Cooperative Agreements to take affirmative steps to ensure such fairness by ensuring procurement procedures are carried out in accordance with 43 C.F.R. § 12.944 for Institutions of Higher Education, Hospitals and Other Non-Profit Organizations and 43 C.F.R. § 12.76 for State and Local Governments.

B. Special Provisions.

1. Access to Records.
 - a. The County will give the Service and the Comptroller General of the United States, or any authorized representative, access to and the right to examine all records related to this Agreement.
 - b. The Service will give the County or any authorized representative the right to examine any records related to this Agreement that otherwise would be available to the County under the Freedom of Information Act, codified at 5 U.S.C. § 552.
2. Advertising and Endorsements. The County will ensure that all information submitted for publication or other public releases of information regarding this project shall carry the following disclaimer:

The views and conclusions contained in this document are those of the authors and should not be interpreted as representing the opinions or policies of the United States Government. Mention of trade names or commercial products does not constitute their endorsement by the United States Government.

3. Drug Free Work Place Act. The parties certify that comprehensive actions will be taken to ensure the work place is drug free.
4. Headings. The headings throughout this Agreement are for convenience and reference only and shall in no way be held to explain, modify, amplify or aid in the interpretation, construction, or meaning of the provisions of this Agreement.
5. Severance of Terms and Compliance with Applicable Law. If any term or provision of this Agreement is held to be invalid or illegal, such term or provision shall not affect the validity or enforceability of the remaining terms and provisions. Meeting the terms of this Agreement shall not excuse any failure to comply with all applicable laws and regulations, whether or not these laws and regulations are specifically listed herein.

The parties shall comply with all applicable laws and regulations. This Agreement is subject to all laws, regulations and rules governing Service property, whether now in force or hereafter enacted or promulgated. Nothing in the Agreement shall be construed as in any way impairing the general powers of the Service for supervision, regulation, and control of its property under such applicable laws, regulations, and rules.

6. Recordkeeping. The County will keep records concerning this Agreement in accordance with Article XI.A, General Provisions, and all applicable circulars of the Office of Management and Budget.

Article XII. Definitions

- A. The term *authorized cooperator* or *cooperator* means an individual, group, or organization providing programs and services in conjunction with or on behalf of the County under this Agreement pursuant to an agreement between such individual, group, or organization and the County or an authorized agent of the County.
- B. The term *Best Management Practices* means policies and practices that apply the most current and advanced means and technologies available to the County or its DME to undertake and maintain a superior level of environmental performance reasonable in light of the circumstances of the operations conducted under this Agreement. *Best Management Practices* are expected to change from time to time as technology evolves with a goal of sustainability of the operations of the County or its DME. Sustainability of operations refers to operations that have a restorative or net positive impact on the environment.
- C. The term *concessions contract* has the meaning stated in 36 CFR part 51 (2000).

- D. The term *cooperating association* means a private nonprofit corporation established under state law. Cooperating associations support the educational, scientific, historical, and interpretive activities of the Service in a variety of ways, under the provisions of formal agreements with the Service.
- E. Unless otherwise specified in this Agreement, the term *days* means Federal business days.
- F. The terms *Designated Management Entity* and *DME* mean the non-profit organization designated by the County to conduct the day-to-day operations on the Premises.
- G. The term *effective date of this Agreement* or *effective date* means the date of the last signature affixed hereto.
- H. The term *FAR* means the Federal Acquisition Regulations.
- I. The terms *fixtures* and *non-removable equipment* refer to manufactured items of personal property of independent form and utility necessary for the basic functioning of a structure that are affixed to and considered to be part of the structure such that title is with the United States as real property once installed. Fixtures and non-removable equipment do not including buildings materials (e.g., wallboard, flooring, concrete cinder blocks, steel beams, studs, window frames, windows, rafters, roofing, framing, siding, lumber, insulation, wallpaper, paint, etc.). The term *fixture* includes the term *non-removable equipment*.
- J. Unless otherwise specified in this Agreement, the term *gross receipts* means the total amount received by the County or its DME from activities covered by this Agreement, including, but not limited to:
1. The rental of facilities and/or accommodations;
 2. Donations in lieu of payment for the use of facilities and/or accommodations. If, however, the value of a donation made in lieu of payment for the use of facilities and/or accommodations exceeds the established fee for such use, then the excess value shall be treated as a pure donation and shall not be subject to the "gross receipts" calculation;
 3. Sales of goods and services for cash or credit, including sales of tickets to performances and sales through vending machines and other coin-operated devices, other than telephones. Only revenues actually received by the County or its DME from coin-operated telephones shall be included in gross receipts; and
 4. Commissions earned on contracts with third parties operating in the facilities included in this Agreement.

Excluded from this definition of "gross receipts" are cash discounts on purchases; cash discounts on sales; interest on monies loaned or in bank accounts; income from investments; sales and excise taxes that are added as separate charges to approved sales prices, provided that the amount excluded shall not exceed the amount actually due or paid government agencies; revenue generated from the operation of the Park's carousel; and monies received in the form of grants, donations, bequests or gifts.

- K. The term *Government improvement* means the buildings, structures, utility systems, fixtures, equipment, and other improvements upon the lands assigned hereunder, constructed or acquired by the Federal Government and provided by the Federal Government for the purposes of this Agreement.
- L. The term *historic land* means land located within the boundaries of an historic property.
- M. The term *historic property* means buildings and land located within the boundaries of a park area if the buildings and land are part of a pre-historic or historic district or site included on, or eligible for inclusion on, the National Register of Historic Places.
- N. The term *life cycle maintenance* has the meaning set forth in Appendix B, which is attached hereto.
- O. The term *land* means unimproved real property.
- P. The term *major renovation* means a planned, comprehensive renovation of an existing structure that:
 - 1. The Service approves in advance; and
 - 2. The construction cost of which exceeds fifty percent (50%) of the pre-renovation value of the structure.
- Q. The term *OMB* means the U.S. Office of Management and Budget.
- R. The term *party* means either the Service or the County. The term *parties* means the Service and the County.
- S. The term *Premises* means the parcels of land and Government improvements described in Appendix A, attached hereto and incorporated herein by reference, which the Service hereby assigns for use by the County during the term of this Agreement for the conduct of the operations authorized herein.
- T. The term *public program* means an event, class, etc., that is available to the public. A public program need not be free of charge.

- U. The terms *rehabilitation* and *renovation* have the meaning set forth in Appendix B, which is attached hereto.
- V. The term *restoration* means the complete fabrication and replacement of historic elements.
- W. The term *routine maintenance* has the meaning set forth in Appendix B, which is attached hereto.
- X. The term *Service* shall include the National Capital Region, National Park Service. It shall also include the Regional Director, National Capital Region, or such other person as may be designated by the Regional Director, to act for the Regional Director in exercising all authority under this Agreement.
- Y. The term *souvenir* means a memento that serves as a reminder yet has little or no educational or interpretive value.
- Z. The term *structure* means a building or similar edifice affixed to the land so as to be part of the real estate. A structure may include both constructed infrastructure (e.g., water, power and sewer lines) and constructed site improvements (e.g., paved roads, retaining walls, sidewalks, paved driveways, paved parking areas) that are permanently affixed to the land so as to be part of the real estate and that are in direct support of the use of a building or similar edifice. Landscaping that is integral to the construction of a structure is considered as part of a structure. Interior furnishings that are not fixtures are not part of a structure.
- AA. The term *utility* or *utilities* means electric, potable water, storm water, sanitary sewer and telecommunication services. There are no gas lines at Glen Echo Park. In the event gas lines are installed at the Park, then the term *utility* shall also include gas services. As used in this Agreement, the terms *utility* and *utilities* do not include wiring for cable.
- BB. The term *1999 Cooperative Agreement* means the September 13, 1999, Cooperative Agreement regarding Glen Echo Park entered into between the United States, Montgomery County, and the State of Maryland for the rehabilitation of designated existing structures and identified by the number CA-3300-9-001.

Article XIII. Attachments

In addition to the attachments previously specified in this Agreement, the following documents are appendices to this Agreement, which are attached hereto and hereby incorporated by reference and made a part of this Agreement:

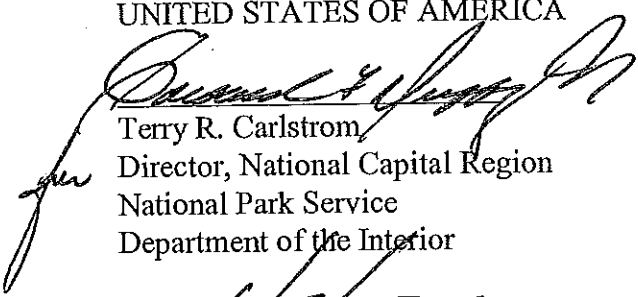
- A. Appendix A, describing the parcels of land and Government improvements the Service hereby assigns for use by the County during the term of this Agreement for the conduct of the operations authorized herein.

- B. Appendix B, detailing the operational and maintenance responsibilities of both parties with respect to the assigned facilities.
- C. Appendix C, a Scope of Sales Guideline.
- D. Appendix D, concerning the carousel agreement between the (1) Service and (2) Parks and History.
- E. Appendix E, concerning OMB Circulars and Other Regulations.

Article XIV. Authorizing Signatures

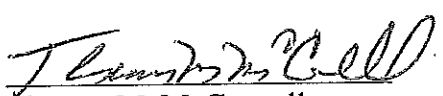
Agreed between the parties:

UNITED STATES OF AMERICA


Terry R. Carlstrom
Director, National Capital Region
National Park Service
Department of the Interior

Date

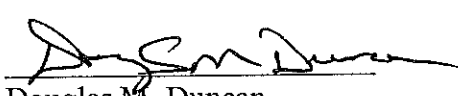
6/7/02


Thomas M. McConnell
Contracting Officer
National Capital Region
National Park Service
Department of the Interior

Date

6/6/02

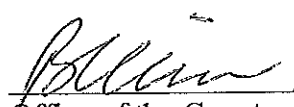
MONTGOMERY COUNTY, MARYLAND


Douglas M. Duncan
County Executive

Date

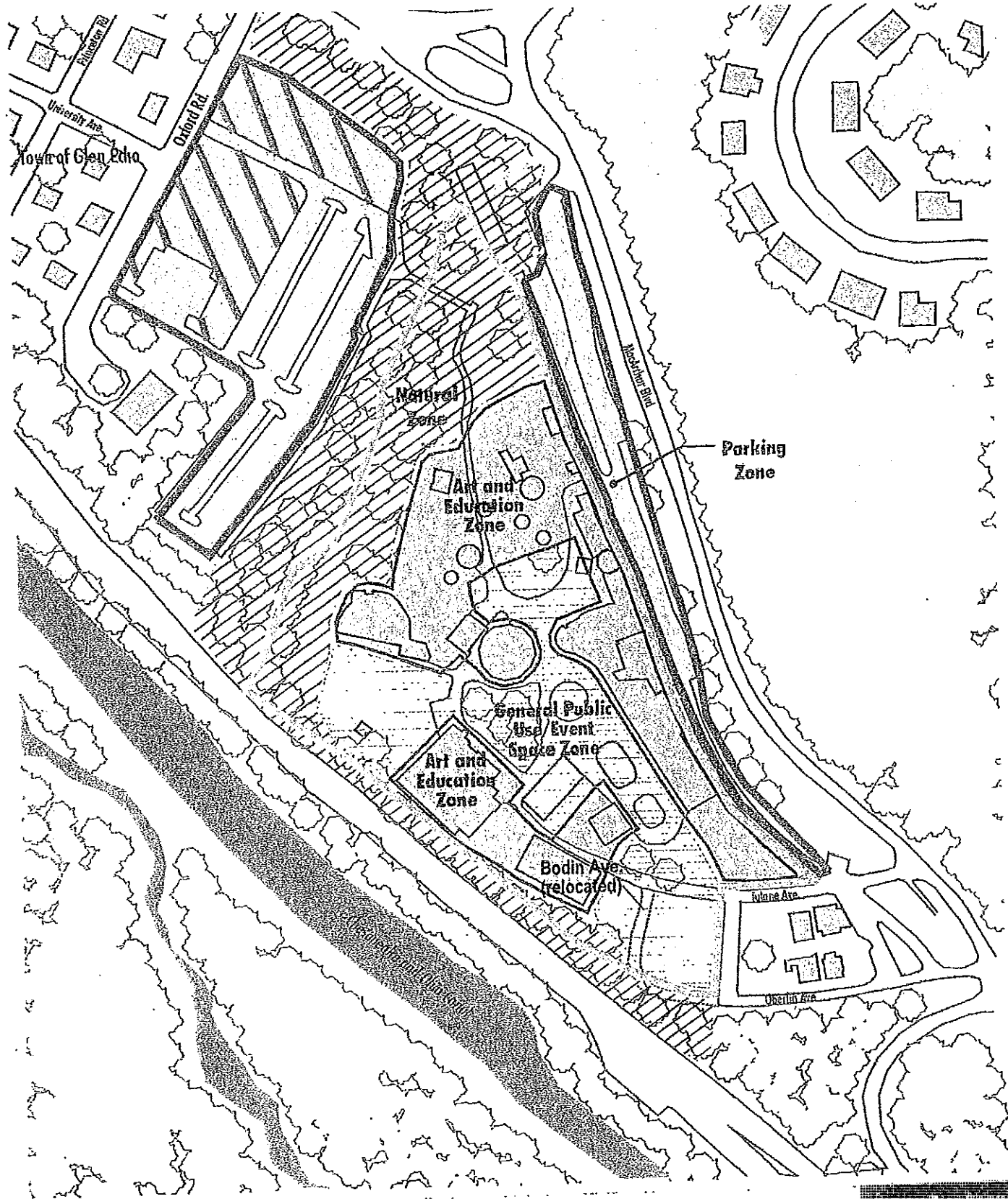
June 7, 2002

Approved for Form and Legal Sufficiency


Office of the County Attorney

Date

6/7/02



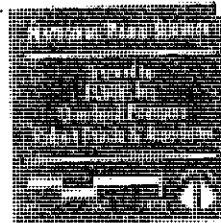
LEGEND

Management Zones

Glen Echo Park
NP/US

NPS Managed Areas for Cooperators Use

-  **NPS Management Areas**
-  **Overflow Parking**



MAINTENANCE RESPONSIBILITIES NATIONAL PARK SERVICE & MONTGOMERY COUNTY

Routine Maintenance

Work activities performed on an annual, recurring basis and are intended to meet routine, daily park operational needs. Typical work performed under operations includes janitorial and custodial services, snow removal, operation or purchase of utilities (water, sewer, and electricity), grounds keeping, etc.

	Service	County
Grounds	<p>Mowing, edging and trimming of grassy areas.</p> <p>Litter pick-up.</p> <p>Trimming; edging; planting, mulching and maintenance of shrubs and flower beds.</p> <p>Mulch and aerate picnic area.</p> <p>Tree planting, pruning, trimming, treatment and removal.</p> <p>Landscaping and maintenance of areas outside of land assignment.</p> <p>Maintenance of site furniture such as benches, trash cans, bike racks, water fountains.</p> <p>Ice/Snow removal, salting/sanding along walks, roadways, paths, and the parking lot</p> <p>Inspect, clean, maintain and repair all asphalt walks, paths, entrances, curbs and associated appurtenances (handrails, lighting, etc.).</p> <p>Inspect, clean, maintain and repair all exterior concrete walk, entrances, pads, ramps, stairs, curbs and associated appurtenances (handrails, lighting, etc.).</p> <p>Inspect and maintain all mulched and natural trails.</p> <p>Inspect, clean maintain and repair all interpretive signs, kiosks and wayside exhibits.</p> <p>Inspect, maintain and repair all playground equipment, woodcarpet surface and rubber mats under swings.</p>	<p>Maintain picnic tables.</p> <p>Set up and take down tents, stages, seating, tables, sound systems for all outside special events.</p> <p>Cleaning /minor repair of directional/locator signs.</p> <p>(Space left empty on purpose.)</p>

Site Utility Systems	<p>Inspect, clean and maintain potable water system (backflow preventers, meters, strainers, valves, exterior piping, NOT fixtures or interior components) and sanitary system (NOT fixtures or interior components).</p> <p>Inspect, maintain and flush fire hydrants.</p> <p>Inspect, maintain and repair stormwater drain system</p> <p>Inspect, maintain and repair Site electrical distribution system up to and including all electrical panels.</p> <p>Inspect, maintain and repair Site telecommunications system up to and including all building terminals</p>	<p>Payment of water and sewer bills, maintaining usage records and distributing bills to appropriate tenants for costs.</p> <p>Inspect, clean, maintain and repair HVAC chiller and boilers.</p>
Buildings -	<p>Routine maintenance of facilities assigned to NPS staff for NPS use.</p> <p>Inspect, clean and maintain stormwater systems (exterior drains, leaders, gutters).</p> <p>(Space left empty on purpose.)</p>	<p>Inspect, maintain and repair HVAC systems (pumps, fans, air handlers, condensers, exhausts, intakes, filters, thermostats, controls, piping system, ductwork system, etc.)</p> <p>Inspect, maintain and repair stormwater systems (interior drains, leaders and gutters and No. Arcade roof drains).</p> <p>Inspect, maintain and repair sanitary sewer systems (clean outs, drains, piping, traps, etc.)</p> <p>Inspect, clean and maintain potable water systems (meters, valves, piping, hot water heaters, drinking fountains, sinks, toilets, etc.)</p> <p>Inspect, maintain and repair telecommunications systems (terminals, patchpads, wiring, jacks, phones, dataports, modems, speakers, etc.)</p> <p>Inspect, maintain and repair electrical systems (panel boxes, bus bars, circuits, breakers, wiring, switches, lights, fans, receptacles, etc.)</p> <p>Inspect, clean, maintain and repair security, protection and surveillance systems (security, smoke detection, fire detection, fire suppression, alarms, etc.)</p> <p>Custodial and janitorial maintenance of all interior spaces assigned.</p> <p>Window washing.</p> <p>Inspect, maintain and repair all finishes and materials (interior and exterior: floors and floor coverings, walls and wall coverings, doors, windows, grilles, hardware, glass blocks, ceilings[including appurtenances like lights, alarms, speakers, diffusers and the exterior of exposed ductwork] displays, etc.).</p>

	(Space left empty on purpose.)	<p>Inspect clean, maintain and repair No. Arcade deck and ramp . Set up and take down processes for special events. Trash and debris removal. Annual maintenance of carousel mechanisms. Routine maintenance of carousel required for operation and in accordance with maintenance plan. Piano tuning. Inspect, maintain and repair all elevators, material lifts, accessible lifts and other means of conveyance. Inspect, maintain and repair AV and sound systems and stage lighting systems. Inspect, maintain and repair roofing systems (bitumen, membrane, asphalt shingle, clay tile, metal pan, flashings, copings, etc.).</p>
<p>Life Cycle Maintenance The upkeep of property and equipment, work necessary to realize the originally anticipated useful life of a fixed asset. Maintenance includes: preventive maintenance; cyclic maintenance (work activities that recur on a periodic cycle of greater than 1 year; Typical projects include re-roofing or re-painting buildings, overhaul engines & HVAC systems, and refinishing floors and other building components); normal repairs; replacement of parts and structural components; periodic inspections, adjustments, lubrication; cleaning (non-janitorial) of equipment; painting, resurfacing & other actions to assure continuing service and to prevent breakdown.</p>		<p>Replace picnic tables; Replace exterior stages, tents, tables, chairs, sound systems, lighting for exterior special events. Replacement of off-site directional/locator signs.</p>
	<p>Grounds</p>	<p>Modification/replacement of street and security lights and components. Modification/replacement of general landscaping (grass areas, planting beds, picnic area). Replacement of trees & shrubs. Replacement of Main Entrance, bridge and boardwalk near Minnehaha Creek. Replacement of site furniture such as benches, trash cans, bike racks, water fountains. Modification/replacement of all asphalt walks, paths, entrances, curbs and associated appurtenances (handrails, lighting, etc.). Modification/replacement of all concrete walks, entrances, pads, ramps, stairs, curbs and associated appurtenances (handrails, lighting, etc.). Modification/replacement of all mulched and natural trails.</p>

	Modification/replacement of all interpretive signs, kiosks and wayside exhibits. Modification/replacement of all playground equipment, woodcarpet surface and rubber mats under swings. Modification/replacement of potable water system (backflow preventers, meters, strainers, valves, exterior piping, NOT fixtures or interior components) and sanitary system (NOT fixtures or interior components). Modification/replacement of fire hydrants. Modification/replacement of Site electrical distribution system up to and including all electrical panels. Modification/replacement of Site telecommunications system up to and including all building terminals.	(Space left empty on purpose.)
Utility Systems		Installation of any new lines or increase in service -- water, sewer, electrical, telecommunications.
Buildings	Replace roof on North Arcade, Arcade, Carousel and Spanish Ballroom as needed. Replace major components of Carousel to include the building, carved animals, band organ; mechanical security and fire detection/suppression systems. Painting of NPS occupied spaces. Modification/replacement of Carousel floor. Modification/replacement of stormwater drain system Modification/replacement of HVAC chiller and boilers. Modification/replacement of exterior neon.	Modification/replacement of HVAC systems (pumps, fans, air handlers, exhausts, intakes, filters, thermostats, controls, piping system, ductwork system, etc.) Modification/replacement of stormwater systems (interior drains, leaders and gutters). Modification/replacement of sanitary sewer systems (cleanouts, drains, piping, traps, etc.) Modification/replacement of potable water systems (meters, valves, piping, hotwater heaters, drinking fountains, sinks, toilets, etc.) Modification/replacement of telecommunications systems (terminals, patchpads, wiring, jacks, phones, dataports, modems, speakers, etc.). Modification/replacement of electrical systems (panel boxes, bus bars, circuits, breakers, wiring, switches, lights, fans, receptacles, etc.). Modification/replacement of security, protection and surveillance systems (security, smoke detection, fire detection, fire suppression, alarms, etc.). Replacement of roofs and appurtenances of all buildings except

	(Space left empty on purpose.)	<p>roof replacement on Spanish Ballroom, North Arcade and Arcade buildings and Carousel.</p> <p>Painting of all assigned interior and exterior spaces except Carousel and NPS assigned spaces.</p> <p>Modification/ replacement of AV and sound systems and stage lighting systems.</p> <p>Modification/replacement of all elevators, material lifts, accessible lifts and other means of conveyance.</p> <p>Modification/replacement of all furnishings (furniture, signs, machines, millwork, etc.).</p> <p>Modification/replacement of finishes and materials (interior and exterior: floors and floor coverings, walls and wall coverings, doors, windows, grilles, hardware, glass block, ceilings[including appurtenances like lights, alarms, speakers, diffusers and exposed ductwork] displays, etc.).</p> <p>Replace individual HVAC units(furnaces, fans, condensers,etc)</p> <p>Repair/replace piano.</p>
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Scope of Sales Statement
Approved Model for NCR Parks

Memorandum

To: Executive Director and Members of the Board of Directors,
Parks and History Association

From: Superintendent, (Park Name)

Subject: Scope of Sales, Parks and History Association

This memorandum will serve as a guideline to be followed when proposing and approving an item for sale by the Parks and History Association (P&HA) at sales outlets within (park name). This guideline serves in addition to those stated in the National Park Service (NPS) Cooperating Association Guideline, NPS-32, and the Cooperating Association Agreement between the NPS and P&HA.

The following items, listed in priority order, will be offered for sale at (park name):

- A. Sales items related directly to the park's primary interpretive themes and resources:
 - 1. (The park should list interpretive themes taken from the Statement for Interpretation.)
 - 2.
 - 3.
- B. Items about or related to other NPS areas or to the NPS in general.
- C. Items related directly to the park's secondary interpretive themes and resources:
 - 1. (The park should list interpretive themes taken from the Statement for Interpretation.)
 - 2.
 - 3.
- D. Items related directly to the natural or cultural history of the park or site.
- E. Items related to recreational uses of the park (for example, ...).

- F. Items related to regional history: (name local counties).
- G. Maps and travel guides of areas frequently travelled to from this park, when such items are not available free of charge from the park.

While it is clearly the responsibility of the P&HA to determine and evaluate the business side of a proposed item -- marketability, quantities, avoiding duplications, space allocation, and prices -- the park is most interested in assuring that high quality interpretive materials are made available to park visitors. Of primary importance is the educational or interpretive value of the sales items.

In proposing or approving an item for sale under the above criteria, care must be taken to insure the accuracy of the content, as well as a professional, readable style of writing or illustration. Consultation with individuals qualified in specific fields of knowledge should occur when deemed necessary by the park superintendent.

Sales items should be selected to appeal to a wide variety of visitors, including children, seniors, non-English speakers, and those with varying physical and learning disabilities. Books have traditionally made up the majority of items offered for sale, but audio and video tapes in various languages, relief maps, and other creative items should be considered, as the items relate to the above criteria. Three-dimensional items, or items which are not intrinsically interpretive, must include descriptive educational material, through a provenance card, for example.

In general, the following kinds of sales items are appropriate:

(list specific kinds of items: books, maps, postcards, etc.)

In general, the following kinds of sales items are inappropriate:

(list specific kinds of items: books, maps, postcards, etc.)

The park staff will review all items carried in the park every 2 years. This review will be done in cooperation with P&HA buyers to check the sales history of the items and to verify that items of the highest quality and marketability are available to the visiting public.

In order to facilitate the business of the P&HA, park staff responsible for reviewing proposed items will return the Inventory Review Form by the due date listed, no more than 30 days after the item is received in the park for review.

**COOPERATING ASSOCIATION
AGREEMENT BETWEEN THE NATIONAL PARK SERVICE
AND THE
PARKS & HISTORY ASSOCIATION**

This Agreement is made and entered into between the Parks & History Association and the United States of America, U.S. Department of the Interior, National Park Service (NPS).

Article I: Background and Objectives

It is the purpose and intent of NPS to preserve, protect, interpret, and manage the National Park System for the benefit, education, and enjoyment of the people of the United States, as provided for in the National Park Service Organic Act of August 25, 1916.

The NPS desires to provide facilities and cooperating services for the production and sale of materials of interpretive, educational, and thematic value and for the presentation of specified and approved programs relating to the interpretive themes of areas of the National Park System and for other unspecified cooperative services for the benefit of the public that are within the incorporation articles and mission of cooperating associations.

Cooperating associations in [agreement with NPS] are incorporated as nonprofit organizations for the purpose of providing support and assistance to the interpretive, educational, and research activities of NPS and to provide interpretive and educational services to the visiting public.

Article II: Authority

Authority for entering into this Agreement are contained within the Acts of August 25, 1916 (16 U.S.C. Sec. 1-3), June 5, 1920 (16 U.S.C. Sec. 6), August 21, 1935 (16 U.S.C. Sec. 461-468e), August 7, 1946 (16 U.S.C. Sec. 17 j-2), August 8, 1953 (16 U.S.C. Sec. 1b(5)), and August 18, 1970 (16 U.S.C. Sec. 1 a-2(g)), and in delegation by the Secretary of the Interior on August 4, 1947 (Vol. 12, F.R., p.5485 et. Seq.) to the Director, NPS and in redelegation to the Regional Directors on March 4, 1966 (Authority Order No. 34, 31 F.R., p. 4255).

Article III: Statement of Work

This Agreement is written in accordance with Director's Order #32 and Reference Manual #32 that govern the partnership between NPS and cooperating associations.

A. The NPS Agrees To:

1. Designate cooperating associations to serve parks. The Regional Director has the authority to designate an association to serve one or more parks in a region (this authority may not be redelegated to superintendents) and the Director has the authority to designate an association that serves parks in more than one region. Authority to terminate or sign an Agreement including supplemental agreements resides with the same respective officials.
2. Comply with 5 CFR Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch" when dealing with any association.
3. Assure that NPS employees will not serve on association boards, even in an ex-officio capacity, and will not represent associations in business transactions or operations, but may advise associations on decisions concerning the relationship of any association to NPS. However, as authorized by Public Law 79-633, NPS employees may assist association operations as part of their assigned duties.
4. Send appropriate NPS representatives to association board meetings in an advisory, nonvoting capacity, but not for participation in executive sessions of the association board unless invited.
5. Reserve the right to terminate the Agreement or any part thereof, for the convenience of the Government or for cause, but must give notice of its intent to do so and must meet with an association representative to present its reasons. Supplemental agreements are governed by these same provisions.
6. Approve in advance all association sales items sold in park areas, through mail order catalogs, and at off-site outlets (excluding those sales outlets operated by an association in partnership with other government entities) for appropriateness of content and for business reasons, price, quality, interpretive value, and accuracy. The superintendent or his designee is the approving official.
7. Undertake review by the superintendent of all off-site sales activities of the association to ensure that NPS interests are protected.
8. Approve in advance and annually, thereafter, all interpretive activities conducted by associations in support of parks.
9. Establish in cooperation with association staff, standard operating procedures for conducting interpretive programs and activities.
10. Audit for content, accuracy, and effective delivery all interpretive programs conducted by associations on behalf of NPS.
11. Assist the association in providing training to association staff appropriate to their agreed interpretive activities so that association employees conducting such programs will possess and demonstrate the same core competencies as NPS interpreters.

12. Review and approve of fees charged by associations for their activities.
13. Assure that any collection of fees by associations meets NPS standards for accountability and security of funds.
14. Provide associations with suitable sales areas and other facilities to enable associations to conduct business. Reserve the right to relocate or withdraw any such facilities (upon reasonable notice) in order to meet the needs of NPS.
15. Reserve the right to conduct inspections of provided facilities whenever it deems necessary.
16. Provide associations with routine maintenance and repair services and utilities such as water, electricity, heat, and air conditioning at each assigned facility, to the extent these services and utilities are required for the operation of the building for governmental purposes. Other maintenance and repair services and utilities will be provided by the association or provided to the association on a reimbursable basis.
17. Negotiate a maintenance and operations plan with the association for those facilities governed by a supplemental agreement.
18. Review and approve in advance association plans for construction, redesign, or renovation of in-park facilities and require that implementation of such plans are in accordance with NPS normal design and construction procedures.
19. Include the association in the planning and design of new government facilities that house association facilities by offering the association the opportunity to review and comment on preliminary and final design plans.
20. Allow with approval from the superintendent, the incidental use by association staff of government-owned or leased vehicles, provided that the use is solely for work authorized under this Agreement or associated supplemental agreements.
21. Deny the use of government postage for association business.
22. Determine jointly with the association the appropriate level of aid to NPS based upon the nature and extent of the association's activities and the needs of NPS, consulting with superintendents and regional and WASO staff as appropriate in this process if necessary to reach an equitable level.
23. Delegate the authority and responsibility to Regional Directors of approving donations in the following categories before they are accepted.
 1. Major research projects
 2. Land acquisitions
 3. Interpretive/educational facilities
 4. Historic preservation/restoration projects

24. Deny association funding of any government personnel salaries or benefits with the exceptions of support for temporary employees working on special interpretive, educational, or research projects that are funded by donations and the reimbursement of the salaries and benefits of employees of Harpers Ferry Center working directly on media projects or plans donated to NPS by an association.

25. Complete in a timely manner association donated and funded projects, with funding accountability to the association, and a report upon request.

B. The Cooperating Association Agrees To:

1. Obtain and maintain recognition by the Internal Revenue Service of tax exemption status under Section 501(c)(3) of the Internal Revenue Code in order to operate in areas of the National Park System.
2. Comply with the policies set forth in Director's Order #32 and other policies of NPS.
3. Notify NPS of board of directors meetings and invite appropriate NPS representatives to board meetings and to appropriate committee meetings.
4. Authorize their employees to undertake no government functions beyond routine visitor information services or other activities authorized by the Cooperating Association Agreement, supplemental agreements, or agreements for voluntary services.
5. Use the Agreement for Voluntary Services for its intended purpose only and not to circumvent requirements for insurance coverage in the Cooperating Association Agreement.
6. Require that association employees who engage in public contact wear some readily identifiable indication of association affiliation, but not NPS or other government uniforms.
7. Possess a signed Cooperating Association Agreement to sell goods and services in areas of the National Park System or affiliated locations. Friends groups are not authorized to sell goods and services in these same areas or affiliated locations except through a special agreement with the association and approval of the park superintendent.
8. Assure that association sales support the purposes of the association as stated in their articles of incorporation.
9. Display a sign that identifies any sales outlet as a nonprofit activity of the officially approved association for the site.
10. Conduct the sales of convenience items under the authority of the National Parks Omnibus Management Act of 1998 (Public Law-105-391) and concession regulations for the benefit of the visitor. Adherence to the preferential rights of concessioners must be upheld in providing visitor services.

11. Sell only approved items that do not violate the conservation principles of NPS. The sale of original prehistoric or historic artifacts or paleontological specimens is ~~prohibited~~. Replicas of such artifacts and specimens must be clearly labeled as such.
12. Sell craft items represented as being Indian-made in accordance with the Indian Arts and Crafts Act of 1990 (Public Law-101-644).
13. Assure that paid advertising in sales items (i.e., journals with advertising) must be incidental to the interpretive value or message of an item. Advertising or vendor information may not imply endorsement by NPS.
14. Obtain approval from the superintendent(s) before commencing business operations in off-site sales outlets that do not serve other governmental entities.
15. Consult with the superintendent(s) when considering operating an off-site sales outlet for another governmental entity.
16. Transfer to NPS upon completion, buildings constructed by the association on U.S. Government property.
17. Complete a financial statement audit for associations with annual gross revenue of One Million Dollars (\$1,000,000) or more and a financial review if revenue is Two Hundred and Fifty Thousand Dollars (\$250,000) to One Million Dollars (\$1,000,000).
18. Submit an annual financial report consisting of NPS form 10-40, IRS form 990 (or 990EZ and 990T, if appropriate), a copy of the year's audited or reviewed financial statement, and a brief narrative of the year's activities and accomplishments. These are submitted to the Servicewide Coordinator in Washington, D.C., and respective officials at the park and regional level.
19. Accept donations only for the purposes described in the articles of incorporation for the association. Donations are governed by NPS Director's Order #21 - Donations and Fundraising.
20. Account to the donor for the use of any funds accepted on behalf of NPS.
21. Comply with Director's Order #21 when conducting any fundraising activities.

Article IV: Term of Agreement

This Agreement is signed by each Cooperating Association and is for 5 years with automatic renewal for another 5 years unless reasonable notice of cancellation is given by either party before the date of renewal. The effective date of the Agreement is the day after it is signed by all parties. Supplemental agreements are for a specified time period not to exceed 5 years with the same automatic renewal and cancellation procedures or they may be cancelled at the time they accomplish their purpose.

Article V: Key Officials

These are not the signing officials of this agreement, but are the contact officials for this agreement.

National Park Service: Servicewide Coordinator for Cooperating Associations, WASO
Cooperating Association: Executive Director or Business Manager

Article VI: Liability

The Cooperating Association shall:

A. Procure public and employee liability insurance from a responsible company or companies with a minimum limitation of One Million Dollars (\$1,000,000) per person for any one claim, and an aggregate limitation of Three Million Dollars (\$3,000,000) for any number of claims arising from any one incident. The policies shall name the United States as an additional insured, shall specify that the insured shall have no right of subrogation against the United States for payments of any premiums or deductibles due thereunder, and shall specify that the insurance shall be assumed by, be for the account of, and be at the insured's sole risk. Prior to beginning the work authorized herein, the cooperating association shall provide NPS with confirmation of such insurance coverage, and

B. Pay the United States the full value for all damages to the lands or other property of the United States caused by such person or organization, its representatives, or employees; and

C. Indemnify, save and hold harmless, and defend the United States against all fines, claims damages, losses, judgement, and expenses arising out of, or from, any omission or activity of such person, organization, its representatives, or employees.

Article VII: Termination

If either party fails to observe any of the terms and conditions of this Agreement, the other party may terminate this Agreement for default without any legal process whatsoever by giving thirty (30) days written notice of termination, effective at the end of the thirty (30) day period.

The NPS may terminate this Agreement for the convenience of the government, at any time, when it is determined to be in the best interest of the public to do so. The affected parties shall be notified in writing within five (5) working days following the termination.

Article VIII: Required Clauses

A. Non-Discrimination: The parties shall abide by the provisions of Executive Order 11246, as amended; shall be in compliance with the requirements of Title VI of the Civil Rights Act of 1964, as amended (78 Stat. 252; 42 U.S.C. § 2000d et seq. (1994 & Supp. 1, 1995); Title V, section 504 of the Rehabilitation Act of 1973 (87 Stat. 394, 29 U.S.C. § 794 (1994), as amended), the Age Discrimination Act of 1975 as amended (89 Stat. 728; 42 U.S.C. § 6101 (1994) and with all other

Federal laws and regulations prohibiting discrimination on the grounds of race, color, national origin, disability, religion, or sex in employment and in providing of facilities and services to the public.

B. Anti-Deficiency Act: Pursuant to the Anti-Deficiency Act, 31 U.S.C. § 1341(a) (1) (1994), nothing herein contained shall be construed as binding the United States to expend in any one fiscal year any sum in excess of appropriations made by Congress for this purpose, or to involve the United States in any contract or other obligation for the further expenditure of money in excess of such appropriations.

C. Interest of Members of Congress: Pursuant to 41 U.S.C. § 22, Interest of Member of Congress, (1994), "No Member of Congress shall be admitted to any share or part of any contract or agreement made, entered into, or accepted by or on behalf of the United States, or to any benefit to arise thereupon."

D. Lobbying Prohibition: The parties shall abide by the provisions of 18 U.S.C. § 1913 Lobbying with Appropriated Monies, (1994), which states:

No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member of Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business.

Whoever, being an officer or employee of the United States or of any department or agency thereof, violates or attempts to violate this section, shall be fined under this title or imprisoned not more than one year, or both; and after notice and hearing by the superior officer vested with the power of removing him, shall be removed from office or employment.

E. Severance of Terms and Compliance with Applicable Law: The parties shall comply with all applicable laws and regulations. This Agreement is subject to all laws, regulations and rules governing NPS property, whether now in force or hereafter enacted or promulgated. Nothing in the Agreement shall be construed as in any way impairing the general powers of NPS for supervision, regulation, and control of its property under such applicable laws, regulations, and rules.

If any term or provision of this Agreement is held to be invalid or illegal, such term or provision shall not affect the validity or enforceability of the remaining terms and provisions. Meeting the terms of this Agreement shall not excuse any failure to comply with all applicable laws and regulations, whether or not these laws and regulations are specifically listed herein.

F. Drug Free Work Place Act (Required For Use With Appropriated Funds): The parties certify that comprehensive actions will be taken to ensure the work place is drug free.

G. Volunteers in the Park: All unpaid representatives of the Parties shall be Volunteers in the Parks (VIP's), under 16 U.S.C. § 18g et seq. (1994). The VIP's are not federal employees but shall be entitled to those benefits and protections related to workmen's compensation, federal tort claims and others as specified in the Volunteers in the Parks Act.

Article IX. Standard Clauses

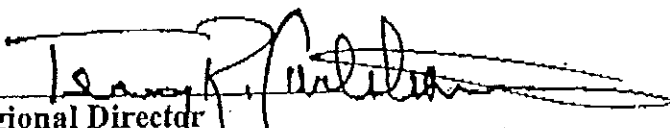
None

Article X. Authorizing Signatures

Agreed between the parties this NINTH day of AUGUST, 1999.

National Park Service

Cooperating Association


Regional Director
National Capital Region


Chairperson, Board of Directors

Exhibit A

This exhibit describes those facilities within the park(s) which are designated for use by the Association. A clear, concise written description and/or floor plan will be used to designate facilities assigned for use by the Association to carry out its interpretive, educational and research support mission for NPS.

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Appendix D

SUPPLEMENTAL COOPERATING AGREEMENT

BETWEEN

NATIONAL PARK SERVICE

UNITED STATES DEPARTMENT OF THE INTERIOR

AND THE

PARKS AND HISTORY ASSOCIATION

This is a Supplemental Cooperating Agreement to the Memorandum of Agreement between the National Park Service (hereinafter referred to as the "Service"), an agency of the United States Department of the Interior, acting in this behalf through the Director, National Park Service, or the Director's designee, and the Parks and History Association (hereinafter referred to as the "Association"), acting through the Chair of its Board of Directors or the Board's designee.

WITNESSETH

WHEREAS, the Service is charged with the responsibility for administering the National Park System of the United States, which contains outstanding areas reflecting the natural, cultural, and historical heritage of the nation; and

WHEREAS, it is the purpose of the Service to preserve and manage those areas for the benefit and inspiration of all people of the United States; and

WHEREAS, the Service is authorized and wishes to continue a program of fine arts, performing arts, interpretive activities, and recreational activities indicative of the diverse and rich history of Glen Echo Park; and

WHEREAS, the Service owns an original 1921 Dentzel Carousel and its accompanying structures at Glen Echo Park, and has determined the need to restore, preserve, and operate said Carousel as part of the interpretive and recreational activities at Glen Echo Park; and

WHEREAS, the Association, being a not-for-profit private organization, was created for the purpose of assisting the interpretive, educational, scientific, and historical activities of the Service; and that on January 14, 1992, entered into a Memorandum of Agreement with the Service for those purposes; and as such is uniquely qualified to assist the Service in the

restoration, rehabilitation, preservation, and operation for public enjoyment of the 1921 Dentzel Carousel as part of the interpretive and recreational activities at Glen Echo Park;

NOW, THEREFORE, pursuant to the authority of the National Park Service under the Act of August 25, 1916, (16 U.S.C. 1-3), August 7, 1946, (16 U.S.C., sec. 17 j-2), August 21, 1935, (16 U.S.C., sec. 461-468e), June 5, 1920, (U.S.C., sec. 6) August 8, 1953, (16 U.S.C., sec 1b5), August 18, 1970, (16 U.S.C., sec. 1a-2(g)), and other laws supplemental thereto and amendatory thereof, and in consideration of the mutual benefits which will accrue to the Service and the Association, the parties agree as follows:

I. RESPONSIBILITIES OF THE NATIONAL PARK SERVICE

A. OPERATION

The Service agrees to determine, after consultation with the Association, dates, times, and hours of operation of the Carousel; to determine ticket prices for Carousel riders; and to establish daily operating procedures. The Service agrees to consider such factors as, but not limited to, seasons, weather, visitation patterns, mechanical conditions, and potential safety hazards, before making decisions on the operation of the Carousel.

B. SAFETY

The Service agrees to establish safety procedures for the operation of the Carousel and its accompanying structures, including the Wurlitzer Band Organ; to train Service and Association staff in safety procedures; to coordinate and monitor safety inspections of the Carousel by appropriate public agencies and private experts agreed upon in advance by the Service and the Association; and to respond to recommendations and directives resulting from the inspections to insure compliance with those State of Maryland regulations necessary to obtain a permit to operate the Carousel.

C. MAINTENANCE

The Service agrees to be responsible for the maintenance and repair tasks of the Carousel and its accompanying structures, including the Wurlitzer Band Organ; and that these tasks will include the repair or replacement of mechanical parts, including crankshafts, bearings, brass tubing, switches, wires, fuses, and other electrical equipment, or portions thereof, of the Carousel and the Wurlitzer Band Organ; and the repair and replacement of walls, ceilings, floors, and windows, or portions thereof, of the accompanying structures. The Service also agrees to purchase needed supplies for the maintenance of the Carousel and its accompanying structures, including the Wurlitzer Band Organ; and to arrange for mechanical and safety inspections by appropriate public agencies and private experts agreed upon in advance by the Service and the

Association; and to respond to recommendations and directives resulting from those inspections to insure compliance with those State of Maryland regulations necessary to obtain a permit to operate the Carousel.

D. SECURITY

The Service agrees to be responsible for the security of the Carousel and its accompanying structures, including the Wurlitzer Band Organ; and will take measures to assure protection from fire, vandalism, theft, and other threats.

E. RESTORATION

The Service agrees to determine needs, priorities, and scheduling of the restoration and preservation program for the Carousel; and to contact experts in restoration from the public and private sector, agreed upon in advance by the Service and the Association, in order to obtain information and arrange restoration and preservation activities; and to provide the Association with appropriate data regarding scheduling and costs of restoration and preservation activities.

F. DONATED FUNDS

The Service agrees to place a donations box near the Carousel structure, and to monitor the collection of donated funds; and to store the donation funds and donation box daily in a secure place. The Service will deposit the donated funds in a special NPS account for the restoration of the Carousel.

G. LIABILITY

The Service agrees to be liable for those accidents and injuries to park visitors, employees, volunteers, and Association personnel occurring on park property (including accompanying structures of the Carousel) prior to their entry on to the Carousel and-after their exit from the Carousel.

II. RESPONSIBILITIES OF THE PARKS & HISTORY ASSOCIATION

A. OPERATIONS

The Association agrees to operate the Carousel under the guidelines and policies established by the Service, and that conditions are subject to change due to factors including, but not limited to, seasons, weather, visitation patterns, mechanical conditions, and potential safety hazards. The Association also agrees to purchase all supplies necessary for the sales operations of the Carousel, including tickets, register tapes, etc.

B. PERSONNEL

The Association agrees to hire, train, pay, and provide appropriate benefits to personnel to operate the Carousel; and that said personnel are not government employees and will not be required to undertake any Government function or activity on behalf of the Service beyond routine visitor information services.

C. SAFETY

The Association agrees to operate the Carousel under the safety guidelines established by the Service, and to train all personnel in safety procedures; and to pay for necessary safety inspections by the appropriate public agencies and private experts agreed upon in advance by the Service and the Association; and to conduct a daily safety inspection before operation of the Carousel.

D. MAINTENANCE

The Association agrees to be responsible for routine and preventive maintenance necessary for the operation of the Carousel, under the directions and guidelines established by the Service; and that preventive maintenance will include changing light bulbs, lubricating bearings and other machinery, polishing and cleaning brass, sweeping and dusting of the Carousel and the Carousel building, cleaning windows, and similar tasks necessary for the daily operation of the Carousel. The Association agrees that it will pay for necessary mechanical inspections of the Carousel by the appropriate public agencies and private experts agreed upon in advance by the Service and the Association.

E. RESTORATION

The Association agrees to use a portion of the funds from ticket sales to assist the Service in the restoration and preservation program of the Carousel; and that portion of the funds will be equal to the sum of three days receipts from Carousel operations, and that those three days will be determined before the start of the Carousel season by agreement between the Association and the Service; the Association agrees that it will cooperate with the Service in determining the needs, priorities, and scheduling of the restoration and preservation program.

F. LIABILITY

The Association agrees to procure and employ liability insurance with a minimum limitation of \$1,000,000 for any number of claims from one incident with respect to the activities of the Association and its employees and the requirements of the State of Maryland regarding the operation of a Carousel.

THE WHITE HOUSE

OMB Circular A-87

Appendix E

Help Text Only



Office of Management and Budget

August 29, 1997

MEMORANDUM FOR THE RECORD

FROM: Norwood J. Jackson
Deputy Controller
Office of Federal Financial Management

SUBJECT: Recompilation of OMB Circular A-87

I certify that the attached document constitutes a recompilation of Office of Management and Budget Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments." The recompilation consists of the last complete revision of the Circular published at 60 FR 26484 (dated May 4, 1995, published May 17, 1995), as further amended at 62 FR 45934 (August 29, 1997).

OMB CIRCULAR A-87 (REVISED 5/4/95, As Further Amended 8/29/97)

CIRCULAR NO. A-87
Revised

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Cost Principles for State, Local, and Indian Tribal Governments

1. **Purpose.** This Circular establishes principles and standards for determining costs for Federal awards carried out through grants, cost reimbursement contracts, and other agreements with State and local governments and federally-recognized Indian tribal governments (governmental units).
2. **Authority.** This Circular is issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended; the Chief Financial Officers Act of 1990; Reorganization Plan No. 2 of 1970; and Executive Order No. 11541 ("Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President").
3. **Background.** An interagency task force was established in 1987 to review existing cost principles for Federal awards to State, local, and Indian tribal governments. The task force studied Inspector General reports and recommendations, solicited suggestions for changes to the Circular from governmental units, and compared for consistency the provisions of other OMB cost principles circulars covering non-profit organizations and universities. A proposed revised Circular reflecting the results of those efforts was issued on October 12, 1988, and August 19, 1993. Extensive comments on the proposed revisions, discussions with interest groups, and related developments were considered in developing this revision.
4. **Rescissions.** This Circular rescinds and supersedes Circular A-87, issued January 15, 1981.
5. **Policy.** This Circular establishes principles and standards to provide a uniform approach for determining costs and to promote effective program delivery, efficiency, and better relationships between governmental units and the Federal Government. The principles are for determining allowable costs only. They are not intended to identify the circumstances or to dictate the extent of Federal and governmental unit participation in the financing of a particular Federal award. Provision for profit or other increment above cost is outside the scope of this Circular.

6. **Definitions.** Definitions of key terms used in this Circular are contained in Attachment A, Section B.

7. **Required Action.** Agencies responsible for administering programs that involve cost reimbursement contracts, grants, and other agreements with governmental units shall issue codified regulations to implement the provisions of this Circular and its Attachments by September 1, 1995.

8. **OMB Responsibilities.** The Office of Management and Budget (OMB) will review agency regulations and implementation of this Circular, and will provide policy interpretations and assistance to insure effective and efficient implementation. Any exceptions will be subject to approval by OMB. Exceptions will only be made in particular cases where adequate justification is presented.

9. **Information Contact.** Further information concerning this Circular may be obtained by contacting the Office of Federal Financial Management, Financial Standards and Reporting Branch, Office of Management and Budget, Washington, DC 20503, telephone 202-395-3993.

10. **Policy Review Date.** OMB Circular A-87 will have a policy review three years from the date of issuance.

11. **Effective Date.** This Circular is effective as follows:

- For costs charged indirectly or otherwise covered by the cost allocation plans described in Attachments C, D and E, this revision shall be applied to cost allocation plans and indirect cost proposals submitted or prepared for a governmental unit's fiscal year that begins on or after September 1, 1995.

- For other costs, this revision shall be applied to all awards or amendments, including continuation or renewal awards, made on or after September 1, 1995.

Attachments

OMB CIRCULAR NO. A-87

COST PRINCIPLES FOR STATE, LOCAL AND INDIAN TRIBAL GOVERNMENTS

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Attachment A - General Principles for Determining Allowable Costs

Attachment B - Selected Items of Cost

Attachment C - State/Local-Wide Central Service Cost Allocation Plans

Attachment D - Public Assistance Cost Allocation Plans

Attachment E - State and Local Indirect Cost Rate Proposals

ATTACHMENT A
Circular No. A-87

GENERAL PRINCIPLES FOR DETERMINING ALLOWABLE COSTS

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3. Awarding agency

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5. Claim

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7. Common rule

8. Contract

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12. Federally-recognized Indian tribal government

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A. Purpose and Scope

1. Objectives. This Attachment establishes principles for determining the allowable costs incurred by State, local, and federally-recognized Indian tribal governments (governmental units) under grants, cost reimbursement contracts, and other agreements with the Federal Government (collectively referred to in this Circular as "Federal awards"). The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal or governmental unit participation in the financing of a particular program or project. The principles are designed to provide that Federal awards bear their fair share of cost recognized under these principles except where restricted or prohibited by law. Provision for profit or other increment above cost is outside the scope of this Circular.

2. Policy guides.

a. The application of these principles is based on the fundamental premises that:

(1) Governmental units are responsible for the efficient and effective administration of Federal awards through the application of sound management practices.

(2) Governmental units assume responsibility for administering Federal funds in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the Federal award.

(3) Each governmental unit, in recognition of its own unique combination of staff, facilities, and experience, will have the primary responsibility for employing whatever form of organization and management techniques may be necessary to assure proper and efficient administration of Federal awards.

b. Federal agencies should work with States or localities which wish to test alternative mechanisms for paying costs for administering Federal programs. The Office of Management and Budget (OMB) encourages Federal agencies to test fee-for-service alternatives as a replacement for current cost-reimbursement payment methods in response to the National Performance Review's (NPR) recommendation. The NPR recommended the fee-for-service approach to reduce the burden associated with maintaining systems for charging administrative costs to Federal programs and preparing and approving cost allocation plans. This approach should also increase incentives for administrative efficiencies and improve outcomes.

3. Application.

a. These principles will be applied by all Federal agencies in determining costs incurred by governmental units under Federal awards (including subawards) except those with (1) publicly-financed educational institutions subject to OMB Circular A-21, "Cost Principles for Educational Institutions," and (2) programs administered by publicly-owned hospitals and other providers of medical care that are subject to requirements promulgated by the sponsoring Federal agencies. However, this Circular does apply to all central service and department/agency costs that are allocated or billed to those educational institutions, hospitals, and other providers of medical care or services by other State and local government departments and agencies.

b. All subawards are subject to those Federal cost principles applicable to the particular organization concerned. Thus, if a subaward is to a governmental unit (other than a college, university or hospital), this Circular shall apply; if a subaward is to a commercial organization, the cost principles applicable to commercial organizations shall apply; if a subaward is to a college or university, Circular A-21 shall apply; if a subaward is to a hospital, the cost principles used by the Federal awarding agency for awards to hospitals shall apply, subject to the provisions of subsection A.3.a. of this Attachment; if a subaward is to some other non-profit organization, Circular A-122, "Cost Principles for Non-Profit Organizations," shall apply.

c. These principles shall be used as a guide in the pricing of fixed price arrangements where costs are used in determining the appropriate price.

d. Where a Federal contract awarded to a governmental unit incorporates a Cost Accounting Standards (CAS) clause, the requirements of that clause shall apply. In such cases, the governmental unit and the cognizant Federal agency shall establish an appropriate advance agreement on how the governmental unit will comply with applicable CAS requirements when estimating, accumulating and reporting costs under CAS-covered contracts. The agreement shall indicate that OMB Circular A-87 requirements will be applied to other Federal awards. In all cases, only one set of records needs to be maintained by the governmental unit.

e. Conditional exemptions.

(1) OMB authorizes conditional exemption from OMB administrative requirements and cost principles circulars for certain Federal programs with statutorily-authorized consolidated planning and consolidated administrative funding, that are identified by a Federal agency and approved by the head of the Executive department or establishment. A Federal agency shall consult with OMB during its consideration of whether to grant such an exemption.

(2) To promote efficiency in State and local program administration, when Federal non-entitlement programs with common purposes have specific statutorily-authorized consolidated planning and consolidated administrative funding and where most of the State agency's resources come from non-Federal sources, Federal agencies may exempt these covered State-administered, non-entitlement grant programs from certain OMB grants management requirements. The exemptions would be from all but the allocability of costs provisions of OMB Circulars A-87 (Attachment A, subsection C.3), "Cost Principles for State, Local, and Indian Tribal Governments," A-21 (Section C, subpart 4), "Cost Principles for Educational Institutions," and A-122 (Attachment A, subsection A.4), "Cost Principles for Non-Profit Organizations," and from all of the administrative requirements provisions of OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," and the agencies' grants management common rule.

(3) When a Federal agency provides this flexibility, as a prerequisite to a State's exercising this option, a State must adopt its own written fiscal and administrative requirements for expending and accounting for all funds, which are consistent with the provisions of OMB Circular A-87, and extend such policies to all subrecipients. These fiscal and administrative requirements must be sufficiently specific to ensure that: funds are used in compliance with all applicable Federal statutory and regulatory provisions, costs are reasonable and necessary for operating these programs, and funds are not be used for general expenses required to carry out other responsibilities of a State or its subrecipients.

B. Definitions

1. "Approval or authorization of the awarding or cognizant Federal agency" means documentation evidencing consent prior to incurring a specific cost. If such costs are specifically identified in a Federal award document, approval of the document constitutes approval of the costs. If the costs are covered by a State/local-wide cost allocation plan or an indirect cost proposal, approval of the plan constitutes the approval.

2. "Award" means grants, cost reimbursement contracts and other agreements between a State, local and Indian tribal government and the Federal Government.

3. "Awarding agency" means (a) with respect to a grant, cooperative agreement, or cost reimbursement contract, the Federal agency, and (b) with respect to a subaward, the party that awarded the subaward.

4. "Central service cost allocation plan" means the documentation identifying, accumulating, and allocating or developing

billing rates based on the allowable costs of services provided by a governmental unit on a centralized basis to its departments and agencies. The costs of these services may be allocated or billed to users.

5. "Claim" means a written demand or written assertion by the governmental unit or grantor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of award terms, or other relief arising under or relating to the award. A voucher, invoice or other routine request for payment that is not a dispute when submitted is not a claim. Appeals, such as those filed by a governmental unit in response to questioned audit costs, are not considered claims until a final management decision is made by the Federal awarding agency.

6. "Cognizant agency" means the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed under this Circular on behalf of all Federal agencies. OMB publishes a listing of cognizant agencies.

7. "Common Rule" means the "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; Final Rule" originally issued at 53 FR 8034-8103 (March 11, 1988). Other common rules will be referred to by their specific titles.

8. "Contract" means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to): awards and notices of awards; job orders or task orders issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and, bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301 et seq.

9. "Cost" means an amount as determined on a cash, accrual, or other basis acceptable to the Federal awarding or cognizant agency. It does not include transfers to a general or similar fund.

10. "Cost allocation plan" means central service cost allocation plan, public assistance cost allocation plan, and indirect cost rate proposal. Each of these terms are further defined in this section.

11. "Cost objective" means a function, organizational subdivision, contract, grant, or other activity for which cost data are needed and for which costs are incurred.

12. "Federally-recognized Indian tribal government" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any native village as defined in Section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided through the Bureau of Indian Affairs.

13. "Governmental unit" means the entire State, local, or federally-recognized Indian tribal government, including any component thereof. Components of governmental units may function independently of the governmental unit in accordance with the term of the award.

14. "Grantee department or agency" means the component of a State, local, or federally-recognized Indian tribal government which is responsible for the performance or administration of all or some part of a Federal award.

15. "Indirect cost rate proposal" means the documentation prepared by a governmental unit or component thereof to substantiate its request for the establishment of an indirect cost rate as described in Attachment E of this Circular.

16. "Local government" means a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (whether or not incorporated as a non-profit corporation under State law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

17. "Public assistance cost allocation plan" means a narrative description of the procedures that will be used in identifying, measuring and allocating all administrative costs to all of the programs administered or supervised by State public assistance agencies as described in Attachment D of this Circular.

18. "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments.

C. Basic Guidelines

1. Factors affecting allowability of costs. To be allowable under Federal awards, costs must meet the following general criteria:

- a. Be necessary and reasonable for proper and efficient performance and administration of Federal awards.
- b. Be allocable to Federal awards under the provisions of this Circular.
- c. Be authorized or not prohibited under State or local laws or regulations.
- d. Conform to any limitations or exclusions set forth in these principles, Federal laws, terms and conditions of the Federal award, or other governing regulations as to types or amounts of cost items.
- e. Be consistent with policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the governmental unit.
- f. Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- g. Except as otherwise provided for in this Circular, be determined in accordance with generally accepted accounting principles.
- h. Not be included as a cost or used to meet cost sharing or matching requirements of any other Federal award in either the current or a prior period, except as specifically provided by Federal law or regulation.
- i. Be the net of all applicable credits.
- j. Be adequately documented.

2. Reasonable costs. A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when governmental units or components are predominately federally-funded. In determining reasonableness of a given cost, consideration shall be given to:

- a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the governmental unit or the performance of the Federal award.
- b. The restraints or requirements imposed by such factors as: sound business practices; arms length bargaining; Federal, State and other laws and regulations; and, terms and conditions of the Federal award.
- c. Market prices for comparable goods or services.
- d. Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the governmental unit, its employees, the public at large, and the Federal Government.
- e. Significant deviations from the established practices of the governmental unit which may unjustifiably increase the Federal award's cost.

3. Allocable costs.

- a. A cost is allocable to a particular cost objective if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received.
- b. All activities which benefit from the governmental unit's indirect cost, including unallowable activities and services donated to the governmental unit by third parties, will receive an appropriate allocation of indirect costs.
- c. Any cost allocable to a particular Federal award or cost objective under the principles provided for in this Circular may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by law

or terms of the Federal awards, or for other reasons. However, this prohibition would not preclude governmental units from shifting costs that are allowable under two or more awards in accordance with existing program agreements.

d. Where an accumulation of indirect costs will ultimately result in charges to a Federal award, a cost allocation plan will be required as described in Attachments C, D, and E.

4. Applicable credits.

a. Applicable credits refer to those receipts or reduction of expenditure-type transactions that offset or reduce expense items allocable to Federal awards as direct or indirect costs. Examples of such transactions are: purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds or rebates, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the governmental unit relate to allowable costs, they shall be credited to the Federal award either as a cost reduction or cash refund, as appropriate.

b. In some instances, the amounts received from the Federal Government to finance activities or service operations of the governmental unit should be treated as applicable credits. Specifically, the concept of netting such credit items (including any amounts used to meet cost sharing or matching requirements) should be recognized in determining the rates or

amounts to be charged to Federal awards. (See Attachment B, item 15, "Depreciation and use allowances," for areas of potential application in the matter of Federal financing of activities.)

D. Composition of Cost

1. Total cost. The total cost of Federal awards is comprised of the allowable direct cost of the program, plus its allocable portion of allowable indirect costs, less applicable credits.

2. Classification of costs. There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the Federal award or other final cost objective. Therefore, it is essential that each item of cost be treated consistently in like circumstances either as a direct or an indirect cost. Guidelines for determining direct and indirect costs charged to Federal awards are provided in the sections that follow.

E. Direct Costs

1. General. Direct costs are those that can be identified specifically with a particular final cost objective.

2. Application. Typical direct costs chargeable to Federal awards are:

a. Compensation of employees for the time devoted and identified specifically to the performance of those awards.

b. Cost of materials acquired, consumed, or expended specifically for the purpose of those awards.

c. Equipment and other approved capital expenditures.

d. Travel expenses incurred specifically to carry out the award.

3. Minor items. Any direct cost of a minor amount may be treated as an indirect cost for reasons of practicality where such accounting treatment for that item of cost is consistently applied to all cost objectives.

F. Indirect Costs

1. General. Indirect costs are those: (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. The term "indirect costs," as used herein, applies to costs of this type originating in the grantee department, as well as those incurred by other departments in supplying goods, services, and facilities. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect costs within a governmental unit department or in other agencies providing services to a governmental unit department. Indirect cost pools should be distributed to benefitted cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.

2. Cost allocation plans and indirect cost proposals. Requirements for development and submission of cost allocation plans and indirect cost rate proposals are contained in Attachments C, D, and E.

3. Limitation on indirect or administrative costs.

a. In addition to restrictions contained in this Circular, there may be laws that further limit the amount of administrative or indirect cost allowed.

b. Amounts not recoverable as indirect costs or administrative costs under one Federal award may not be shifted to another Federal award, unless specifically authorized by Federal legislation or regulation.

G. Interagency Services. The cost of services provided by one agency to another within the governmental unit may include allowable direct costs of the service plus a pro rate share of indirect costs. A standard indirect cost allowance equal to ten percent of the direct salary and wage cost of providing the service (excluding overtime, shift premiums, and fringe benefits) may be used in lieu of determining the actual indirect costs of the service. These services do not include centralized services included in central service cost allocation plans as described in Attachment C.

H. Required Certifications. Each cost allocation plan or indirect cost rate proposal required by Attachments C and E must comply with the following:

1. No proposal to establish a cost allocation plan or an indirect cost rate, whether submitted to a Federal cognizant agency or maintained on file by the governmental unit, shall be acceptable unless such costs have been certified by the governmental unit using the Certificate of Cost Allocation Plan or Certificate of Indirect Costs as set forth in Attachments C and E. The certificate must be signed on behalf of the governmental unit by an individual at a level no lower than chief financial officer of the governmental unit that submits the proposal or component covered by the proposal.

2. No cost allocation plan or indirect cost rate shall be approved by the Federal Government unless the plan or rate proposal has been certified. Where it is necessary to establish a cost allocation plan or an indirect cost rate and the governmental unit has not submitted a certified proposal for establishing such a plan or rate in accordance with the requirements, the Federal Government may either disallow all indirect costs or unilaterally establish such a plan or rate. Such a plan or rate may be based upon audited historical data or such other data that have been furnished to the cognizant Federal agency and for which it can be demonstrated that all unallowable costs have been excluded. When a cost allocation plan or indirect cost rate is unilaterally established by the Federal Government because of failure of the governmental unit to submit a certified proposal, the plan or rate established will be set to ensure that potentially unallowable costs will not be reimbursed.

ATTACHMENT B
Circular No. A-87

SELECTED ITEMS OF COST

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41. Travel costs
42. Underrecovery of costs under Federal agreements

Sections 1 through 42 provide principles to be applied in establishing the allowability or unallowability of certain items of cost. These principles apply whether a cost is treated as direct or indirect. A cost is allowable for Federal reimbursement only to the extent of benefits received by Federal awards and its conformance with the general policies and principles stated in Attachment A to this Circular. Failure to mention a particular item of cost in these sections is not intended to imply that it is either allowable or unallowable; rather, determination of allowability in each case should be based on the treatment or standards provided for similar or related items of cost.

1. **Accounting.** The cost of establishing and maintaining accounting and other information systems is allowable.

2. **Advertising and public relations costs.**

a. The term "advertising costs" means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, exhibits, and the like.

b. The term "public relations" includes community relations and means those activities dedicated to maintaining the image of the governmental unit or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

c. Advertising costs are allowable only when incurred for the recruitment of personnel, the procurement of goods and services, the disposal of surplus materials, and any other specific purposes necessary to meet the requirements of the Federal award. Advertising costs associated with the disposal of surplus materials are not allowable where all disposal costs are reimbursed based on a standard rate as specified in the grants management common rule.

d. Public relations costs are allowable when:

(1) Specifically required by the Federal award and then only as a direct cost;

(2) Incurred to communicate with the public and press pertaining to specific activities or accomplishments that result from performance of the Federal award and then only as a direct cost; or

(3) Necessary to conduct general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern, such as notices of Federal contract/grant awards, financial matters, etc.

e. Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in subsections c. and d.;

(2) Except as otherwise permitted by these cost principles, costs of conventions, meetings, or other events related to other activities of the governmental unit including:

(a) Costs of displays, demonstrations, and exhibits;

(b) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(c) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs; and

(4) Costs of advertising and public relations designed solely to promote the governmental unit.

3. **Advisory councils.** Costs incurred by advisory councils or committees are allowable as a direct cost where authorized by the Federal awarding agency or as an indirect cost where allocable to Federal awards.

4. **Alcoholic beverages.** Costs of alcoholic beverages are unallowable.

5. **Audit services.** The costs of audits are allowable provided that the audits were performed in accordance with the Single Audit Act, as implemented by Circular A-128, "Audits of State and Local Governments." [Note: In June 1997, OMB rescinded Circular A-128 and co-located all audit requirements in a re-titled Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."] Generally, the percentage of costs charged to Federal awards for a single audit shall not exceed the percentage derived by dividing Federal funds expended by total funds expended by the recipient or subrecipient (including program matching funds) during the fiscal year. The percentage may be exceeded only if appropriate documentation demonstrates higher actual costs.

Other audit costs are allowable if specifically approved by the awarding or cognizant agency as a direct cost to an award or included as an indirect cost in a cost allocation plan or rate.

6. **Automatic electronic data processing.** The cost of data processing services is allowable (but see section 19, Equipment and other capital expenditures).

7. **Bad debts.** Any losses arising from uncollectible accounts and other claims, and related costs, are unallowable unless provided for in Federal program award regulations.

8. **Bonding costs.** Costs of bonding employees and officials are allowable to the extent that such bonding is in accordance with sound business practice.

9. **Budgeting.** Costs incurred for the development, preparation, presentation, and execution of budgets are allowable.

10. **Communications.** Costs of telephone, mail, messenger, and similar communication services are allowable.

11. **Compensation for personnel services.**

a. **General.** Compensation for personnel services includes all remuneration, paid currently or accrued, for services rendered during the period of performance under Federal awards, including but not necessarily limited to wages, salaries, and fringe benefits. The costs of such compensation are allowable to the extent that they satisfy the specific requirements of this Circular, and that the total compensation for individual employees:

(1) Is reasonable for the services rendered and conforms to the established policy of the governmental unit consistently applied to both Federal and non-Federal activities;

(2) Follows an appointment made in accordance with a governmental unit's laws and rules and meets merit system or other requirements required by Federal law, where applicable; and

(3) Is determined and supported as provided in subsection h.

b. Reasonableness. Compensation for employees engaged in work on Federal awards will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the governmental unit. In cases where the kinds of employees required for Federal awards are not found in the other activities of the governmental unit, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

c. Unallowable costs. Costs which are unallowable under other sections of these principles shall not be allowable under this section solely on the basis that they constitute personnel compensation.

d. Fringe benefits.

(1) Fringe benefits are allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave, employee insurance, pensions, and unemployment benefit plans. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable to the extent that the benefits are reasonable and are required by law, governmental unit-employee agreement, or an established policy of the governmental unit.

(2) The cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, holidays, court leave, military leave, and other similar benefits, are allowable if: (a) they are provided under established written leave policies; (b) the costs are equitably allocated to all related activities, including Federal awards; and, (c) the accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the governmental unit.

(3) When a governmental unit uses the cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. Payments for unused leave when an employee retires or terminates employment are allowable in the year of payment provided they are allocated as a general administrative expense to all activities of the governmental unit or component.

(4) The accrual basis may be only used for those types of leave for which a liability as defined by Generally Accepted Accounting Principles (GAAP) exists when the leave is earned. When a governmental unit uses the accrual basis of accounting, in accordance with GAAP, allowable leave costs are the lesser of the amount accrued or funded.

(5) The cost of fringe benefits in the form of employer contributions or expenses for social security; employee life, health, unemployment, and worker's compensation insurance (except as indicated in section 25, Insurance and indemnification); pension plan costs (see subsection e.); and other similar benefits are allowable, provided such benefits are granted under established written policies. Such benefits, whether treated as indirect costs or as direct costs, shall be allocated to Federal awards and all other activities in a manner consistent with the pattern of benefits attributable to the individuals or group(s) of employees whose salaries and wages are chargeable to such Federal awards and other activities.

e. Pension plan costs. Pension plan costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the governmental unit.

(1) For pension plans financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) Pension costs calculated using an actuarial cost-based method recognized by GAAP are allowable for a given fiscal year if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The cognizant agency may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursement and the governmental unit's contribution to the pension fund. Adjustments may be made by cash refund or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the pension fund.

(3) Amounts funded by the governmental unit in excess of the actuarially determined amount for a fiscal year may be used as the governmental unit's contribution in future periods.

(4) When a governmental unit converts to an acceptable actuarial cost method, as defined by GAAP, and funds pension costs in accordance with this method, the unfunded liability at the time of conversion shall be allowable if amortized over a period of years in accordance with GAAP.

(5) The Federal Government shall receive an equitable share of any previously allowed pension costs (including earnings thereon) which revert or inure to the governmental unit in the form of a refund, withdrawal, or other credit.

f. Post-retirement health benefits. Post-retirement health benefits (PRHB) refers to costs of health insurance or health services not included in a pension plan covered by subsection e. for retirees and their spouses, dependents, and survivors. PRHB costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the governmental unit.

(1) For PRHB financed on a pay as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) PRHB costs calculated using an actuarial cost method recognized by GAAP are allowable if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The cognizant agency may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursements and the governmental unit's contributions to the PRHB fund. Adjustments may be made by cash refund, reduction in current year's PRHB costs, or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the PRHB fund.

(3) Amounts funded in excess of the actuarially determined amount for a fiscal year may be used as the government's contribution in a future period.

(4) When a governmental unit converts to an acceptable actuarial cost method and funds PRHB costs in accordance with this method, the initial unfunded liability attributable to prior years shall be allowable if amortized over a period of years in accordance with GAAP, or, if no such GAAP period exists, over a period negotiated with the cognizant agency.

(5) To be allowable in the current year, the PRHB costs must be paid either to:

(a) An insurer or other benefit provider as current year costs or premiums, or

(b) An insurer or trustee to maintain a trust fund or reserve for the sole purpose of providing post-retirement benefits to retirees and other beneficiaries.

(6) The Federal Government shall receive an equitable share of any amounts of previously allowed post-retirement benefit costs (including earnings thereon) which revert or inure to the governmental unit in the form of a refund, withdrawal, or other credit.

g. Severance pay.

(1) Payments in addition to regular salaries and wages made to workers whose employment is being terminated are allowable to the extent that, in each case, they are required by (a) law, (b) employer-employee agreement, or (c) established written policy.

(2) Severance payments (but not accruals) associated with normal turnover are allowable. Such payments shall be allocated to all activities of the governmental unit as an indirect cost.

(3) Abnormal or mass severance pay will be considered on a case-by-case basis and is allowable only if approved by the cognizant Federal agency.

h. Support of salaries and wages. These standards regarding time distribution are in addition to the standards for payroll documentation.

(1) Charges to Federal awards for salaries and wages, whether treated as direct or indirect costs, will be based on payrolls

documented in accordance with generally accepted practice of the governmental unit and approved by a responsible official(s) of the governmental unit.

(2) No further documentation is required for the salaries and wages of employees who work in a single indirect cost activity.

(3) Where employees are expected to work solely on a single Federal award or cost objective, charges for their salaries and wages will be supported by periodic certifications that the employees worked solely on that program for the period covered by the certification. These certifications will be prepared at least semi-annually and will be signed by the employee or supervisory official having first hand knowledge of the work performed by the employee.

(4) Where employees work on multiple activities or cost objectives, a distribution of their salaries or wages will be supported by personnel activity reports or equivalent documentation which meets the standards in subsection (5) unless a statistical sampling system (see subsection (6)) or other substitute system has been approved by the cognizant Federal agency. Such documentary support will be required where employees work on:

(a) More than one Federal award,

(b) A Federal award and a non-Federal award,

(c) An indirect cost activity and a direct cost activity,

(d) Two or more indirect activities which are allocated using different allocation bases, or

(e) An unallowable activity and a direct or indirect cost activity.

(5) Personnel activity reports or equivalent documentation must meet the following standards:

(a) They must reflect an after-the-fact distribution of the actual activity of each employee,

(b) They must account for the total activity for which each employee is compensated,

(c) They must be prepared at least monthly and must coincide with one or more pay periods, and

(d) They must be signed by the employee.

(e) Budget estimates or other distribution percentages determined before the services are performed do not qualify as support for charges to Federal awards but may be used for interim accounting purposes, provided that:

(i) The governmental unit's system for establishing the estimates produces reasonable approximations of the activity actually performed;

(ii) At least quarterly, comparisons of actual costs to budgeted distributions based on the monthly activity reports are made. Costs charged to Federal awards to reflect adjustments made as a result of the activity actually performed may be recorded annually if the quarterly comparisons show the differences between budgeted and actual costs are less than ten percent; and

(iii) The budget estimates or other distribution percentages are revised at least quarterly, if necessary, to reflect changed circumstances.

(6) Substitute systems for allocating salaries and wages to Federal awards may be used in place of activity reports. These systems are subject to approval if required by the cognizant agency. Such systems may include, but are not limited to, random moment sampling, case counts, or other quantifiable measures of employee effort.

(a) Substitute systems which use sampling methods (primarily for Aid to Families with Dependent Children (AFDC), Medicaid, and other public assistance programs) must meet acceptable statistical sampling standards including:

(i) The sampling universe must include all of the employees whose salaries and wages are to be allocated based on sample results except as provided in subsection (c);

(ii) The entire time period involved must be covered by the sample; and

(iii) The results must be statistically valid and applied to the period being sampled.

(b) Allocating charges for the sampled employees' supervisors, clerical and support staffs, based on the results of the sampled employees, will be acceptable.

(c) Less than full compliance with the statistical sampling standards noted in subsection (a) may be accepted by the cognizant agency if it concludes that the amounts to be allocated to Federal awards will be minimal, or if it concludes that the system proposed by the governmental unit will result in lower costs to Federal awards than a system which complies with the standards.

(7) Salaries and wages of employees used in meeting cost sharing or matching requirements of Federal awards must be supported in the same manner as those claimed as allowable costs under Federal awards.

i. Donated services.

(1) Donated or volunteer services may be furnished to a governmental unit by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the provisions of the Common Rule.

(2) The value of donated services utilized in the performance of a direct cost activity shall, when material in amount, be considered in the determination of the governmental unit's indirect costs or rate(s) and, accordingly, shall be allocated a proportionate share of applicable indirect costs.

(3) To the extent feasible, donated services will be supported by the same methods used by the governmental unit to support the allocability of regular personnel services.

12. Contingencies. Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, or intensity, or with an assurance of their happening, are unallowable. The term "contingency reserve" excludes self-insurance reserves (see subsection 25.c.), pension plan reserves (see subsection 11.e.), and post-retirement health and other benefit reserves (see subsection 11.f.) computed using acceptable actuarial cost methods.

13. Contributions and donations. Contributions and donations, including cash, property, and services, by governmental units to others, regardless of the recipient, are unallowable.

14. Defense and prosecution of criminal and civil proceedings, and claims.

a. The following costs are unallowable for contracts covered by 10 U.S.C. 2324(k), "Allowable costs under defense contracts."

(1) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of false certification brought by the United States where the contractor is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification).

(2) Costs incurred by a contractor in connection with any criminal, civil or administrative proceedings commenced by the United States or a State to the extent provided in 10 U.S.C. 2324(k).

b. Legal expenses required in the administration of Federal programs are allowable. Legal expenses for prosecution of claims against the Federal Government are unallowable.

15. Depreciation and use allowances.

a. Depreciation and use allowances are means of allocating the cost of fixed assets to periods benefitting from asset use. Compensation for the use of fixed assets on hand may be made through depreciation or use allowances. A combination of the two methods may not be used in connection with a single class of fixed assets (e.g., buildings, office equipment, computer equipment, etc.) except as provided in subsection g. Except for enterprise funds and internal service funds that are included as part of a State/local cost allocation plan, classes of assets shall be determined on the same basis used for the government-wide financial statements.

b. The computation of depreciation or use allowances shall be based on the acquisition cost of the assets involved. Where

actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used. The value of an asset donated to the governmental unit by an unrelated third party shall be its fair market value at the time of donation. Governmental or quasi-governmental organizations located within the same State shall not be considered unrelated third parties for this purpose.

c. The computation of depreciation or use allowances will exclude:

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government irrespective of where title was originally vested or where it presently resides; and

(3) Any portion of the cost of buildings and equipment contributed by or for the governmental unit, or a related donor organization, in satisfaction of a matching requirement.

d. Where the use allowance method is followed, the use allowance for buildings and improvements (including land improvements, such as paved parking areas, fences, and sidewalks) will be computed at an annual rate not exceeding two percent of acquisition costs. The use allowance for equipment will be computed at an annual rate not exceeding 6 2/3 percent of acquisition cost. When the use allowance method is used for buildings, the entire building must be treated as a single asset; the building's components (e.g., plumbing system, heating and air condition, etc.) cannot be segregated from the building's shell. The two percent limitation, however, need not be applied to equipment which is merely attached or fastened to the building but not permanently fixed to it and which is used as furnishings or decorations or for specialized purposes (e.g., dentist chairs and dental treatment units, counters, laboratory benches bolted to the floor, dishwashers, modular furniture, carpeting, etc.). Such equipment will be considered as not being permanently fixed to the building if it can be removed without the destruction of, or need for costly or extensive alterations or repairs, to the building or the equipment. Equipment that meets these criteria will be subject to the 6 2/3 percent equipment use allowance limitation.

e. Where the depreciation method is followed, the period of useful service (useful life) established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment used, historical usage patterns, technological developments, and the renewal and replacement policies of the governmental unit followed for the individual items or classes of assets involved. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straight line method of depreciation shall be used. Depreciation methods once used shall not be changed unless approved by the Federal cognizant or awarding agency. When the depreciation method is introduced for application to an asset previously subject to a use allowance, the annual depreciation charge thereon may not exceed the amount that would have resulted had the depreciation method been in effect from the date of acquisition of the asset. The combination of use allowances and depreciation applicable to the asset shall not exceed the total acquisition cost of the asset or fair market value at time of donation.

f. When the depreciation method is used for buildings, a building's shell may be segregated from the major component of the building (e.g., plumbing system, heating, and air conditioning system, etc.) and each major component depreciated over its estimated useful life, or the entire building (i.e., the shell and all components) may be treated as a single asset and depreciated over a single useful life.

g. A reasonable use allowance may be negotiated for any assets that are considered to be fully depreciated, after taking into consideration the amount of depreciation previously charged to the government, the estimated useful life remaining at the time of negotiation, the

effect of any increased maintenance charges, decreased efficiency due to age, and any other factors pertinent to the utilization of the asset for the purpose contemplated.

h. Charges for use allowances or depreciation must be supported by adequate property records. Physical inventories must be taken at least once every two years (a statistical sampling approach is acceptable) to ensure that assets exist, and are in use. Governmental units will manage equipment in accordance with State laws and procedures. When the depreciation method is followed, depreciation records indicating the amount of depreciation taken each period must also be maintained.

16. Disbursing service. The cost of disbursing funds by the Treasurer or other designated officer is allowable.

17. Employee morale, health, and welfare costs. The costs of health or first-aid clinics and/or infirmaries, recreational facilities, employee counseling services, employee information publications, and any related expenses incurred in accordance with a governmental unit's policy are allowable. Income generated from any of these activities will be offset against expenses.

18. Entertainment. Costs of entertainment, including amusement, diversion, and social activities and any costs directly

associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities) are unallowable.

19. Equipment and other capital expenditures.

a. As used in this section the following terms have the meanings as set forth below:

(1) "Capital expenditure" means the cost of the asset including the cost to put it in place. Capital expenditure for equipment means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in, or excluded from, capital expenditure cost in accordance with the governmental unit's regular accounting practices.

(2) "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals the lesser of (a) the capitalization level established by the governmental unit for financial statement purposes, or (b) \$5000.

(3) "Other capital assets" mean buildings, land, and improvements to buildings or land that materially increase their value or useful life.

b. Capital expenditures which are not charged directly to a Federal award may be recovered through use allowances or depreciation on buildings, capital improvements, and equipment (see section 15). See also section 38 for allowability of rental costs for buildings and equipment.

c. Capital expenditures for equipment, including replacement equipment, other capital assets, and improvements which materially increase the value or useful life of equipment or other capital assets are allowable as a direct cost when approved by the awarding agency. Federal awarding agencies are authorized at their option to waive or delegate this approval requirement.

d. Items of equipment with an acquisition cost of less than \$5000 are considered to be supplies and are allowable as direct costs of Federal awards without specific awarding agency approval.

e. The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by (1) continuing to claim the otherwise allowable use allowances or depreciation charges on the equipment or by (2) amortizing the amount to be written off over a period of years negotiated with the cognizant agency.

f. When replacing equipment purchased in whole or in part with Federal funds, the governmental unit may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.

20. Fines and penalties. Fines, penalties, damages, and other settlements resulting from violations (or alleged violations) of, or failure of the governmental unit to comply with, Federal, State, local, or Indian tribal laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the Federal award or written instructions by the awarding agency authorizing in advance such payments.

21. Fund raising and investment management costs.

a. Costs of organized fund raising, including financial campaigns, solicitation of gifts and bequests, and similar expenses incurred to raise capital or obtain contributions are unallowable, regardless of the purpose for which the funds will be used.

b. Costs of investment counsel and staff and similar expenses incurred to enhance income from investments are unallowable. However, such costs associated with investments covering pension, self-insurance, or other funds which include Federal participation allowed by this Circular are allowable.

c. Fund raising and investment activities shall be allocated an appropriate share of indirect costs under the conditions described in subsection C.3.b. of Attachment A.

22. Gains and losses on disposition of depreciable property and other capital assets and substantial relocation of Federal programs.

a. (1) Gains and losses on the sale, retirement, or other disposition of depreciable property shall be included in the year in which they occur as credits or charges to the asset cost grouping(s) in which the property was included. The amount of the gain

or loss to be included as a credit or charge to the appropriate asset cost grouping(s) shall be the difference between the amount realized on the property and the undepreciated basis of the property.

(2) Gains and losses on the disposition of depreciable property shall not be recognized as a separate credit or charge under the following conditions:

(a) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under sections 15 and 19.

(b) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(c) A loss results from the failure to maintain permissible insurance, except as otherwise provided in subsection 25.d.

(d) Compensation for the use of the property was provided through use allowances in lieu of depreciation.

b. Substantial relocation of Federal awards from a facility where the Federal Government participated in the financing to another facility prior to the expiration of the useful life of the financed facility requires Federal agency approval. The extent of the relocation, the amount of the Federal participation in the financing, and the depreciation charged to date may require negotiation of space charges for Federal awards.

c. Gains or losses of any nature arising from the sale or exchange of property other than the property covered in subsection a., e.g., land or included in the fair market value used in any adjustment resulting from a relocation of Federal awards covered in subsection b. shall be excluded in computing Federal award costs.

23. General government expenses.

a. The general costs of government are unallowable (except as provided in section 41). These include:

(1) Salaries and expenses of the Office of the Governor of a State or the chief executive of a political subdivision or the chief executives of federally-recognized Indian tribal governments;

(2) Salaries and other expenses of State legislatures, tribal councils, or similar local governmental bodies, such as county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction;

(3) Cost of the judiciary branch of a government;

(4) Cost of prosecutorial activities unless treated as a direct cost to a specific program when authorized by program regulations (however, this does not preclude the allowability of other legal activities of the Attorney General); and

(5) Other general types of government services normally provided to the general public, such as fire and police, unless provided for as a direct cost in program regulations.

b. For federally-recognized Indian tribal governments and Councils Of Governments (COGs), the portion of salaries and expenses directly attributable to managing and operating Federal programs by the chief executive and his staff is allowable.

24. Idle facilities and idle capacity.

a. As used in this section the following terms have the meanings set forth below:

(1) "Facilities" means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the governmental unit.

(2) "Idle facilities" means completely unused facilities that are excess to the governmental unit's current needs.

(3) "Idle capacity" means the unused capacity of partially used facilities. It is the difference between (a) that which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays and (b) the extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage

would normally be expected for the type of facility involved.

(4) "Cost of idle facilities or idle capacity" means costs such as maintenance, repair, housing, rent, and other related costs, e.g., insurance, interest, and depreciation or use allowances.

b. The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet fluctuations in workload; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subsection, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of such facilities.

c. The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided that the capacity is reasonably anticipated to be necessary or was originally reasonable and is not subject to reduction or elimination by use on other Federal awards, subletting, renting, or sale, in accordance with sound business, economic, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be considered idle facilities.

25. Insurance and indemnification.

a. Costs of insurance required or approved and maintained, pursuant to the Federal award, are allowable.

b. Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

(1) Types and extent and cost of coverage are in accordance with the governmental unit's policy and sound business practice.

(2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the awarding agency has specifically required or approved such costs.

c. Actual losses which could have been covered by permissible insurance (through a self-insurance program or otherwise) are unallowable, unless expressly provided for in the Federal award or as described below. However, the Federal Government will participate in actual losses of a self insurance fund that are in excess of reserves. Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable.

d. Contributions to a reserve for certain self-insurance programs including workers compensation, unemployment compensation, and severance pay are allowable subject to the following provisions:

(1) The type of coverage and the extent of coverage and the rates and premiums would have been allowed had insurance (including reinsurance) been purchased to cover the risks. However, provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made, shall not exceed the discounted present value of the liability. The rate used for discounting the liability must be determined by giving consideration to such factors as the governmental unit's settlement rate for those liabilities and its investment rate of return.

(2) Earnings or investment income on reserves must be credited to those reserves.

(3) Contributions to reserves must be based on sound actuarial principles using historical experience and reasonable assumptions. Reserve levels must be analyzed and updated at least biennially for each major risk being insured and take into account any reinsurance, coinsurance, etc. Reserve levels related to employee-related coverages will normally be limited to the value of claims (a) submitted and adjudicated but not paid, (b) submitted but not adjudicated, and (c) incurred but not submitted. Reserve levels in excess of the amounts based on the above must be identified and justified in the cost allocation plan or indirect cost rate proposal.

(4) Accounting records, actuarial studies, and cost allocations (or billings) must recognize any significant differences due to types of insured risk and losses generated by the various insured activities or agencies of the governmental unit. If individual departments or agencies of the governmental unit experience significantly different levels of claims for a particular risk, those

differences are to be recognized by the use of separate allocations or other techniques resulting in an equitable allocation.

(5) Whenever funds are transferred from a self-insurance reserve to other accounts (e.g., general fund), refunds shall be made to the Federal Government for its share of funds transferred, including earned or imputed interest from the date of transfer.

e. Actual claims paid to or on behalf of employees or former employees for workers' compensation, unemployment compensation, severance pay, and similar employee benefits (e.g., subsection 1 i.f. for post retirement health benefits), are allowable in the year of payment

provided (1) the governmental unit follows a consistent costing policy and (2) they are allocated as a general administrative expense to all activities of the governmental unit.

f. Insurance refunds shall be credited against insurance costs in the year the refund is received.

g. Indemnification includes securing the governmental unit against liabilities to third persons and other losses not compensated by insurance or otherwise. The Federal Government is obligated to indemnify the governmental unit only to the extent expressly provided for in the Federal award, except as provided in subsection d.

h. Costs of commercial insurance that protects against the costs of the contractor for correction of the contractor's own defects in materials or workmanship are unallowable.

26. Interest.

a. Costs incurred for interest on borrowed capital or the use of a governmental unit's own funds, however represented, are unallowable except as specifically provided in subsection b. or authorized by Federal legislation.

b. Financing costs (including interest) paid or incurred on or after the effective date of this Circular associated with the otherwise allowable costs of building acquisition, construction, or fabrication, reconstruction or remodeling completed on or after October 1, 1980 is allowable, subject to the conditions in (1)-(4). Financing costs (including interest) paid or incurred on or after the effective date of this Circular associated with otherwise allowable costs of equipment is allowable, subject to the conditions in (1)-(4).

(1) The financing is provided (from other than tax or user fee sources) by a bona fide third party external to the governmental unit;

(2) The assets are used in support of Federal awards;

(3) Earnings on debt service reserve funds or interest earned on borrowed funds pending payment of the construction or acquisition costs are used to offset the current period's cost or the capitalized interest, as appropriate. Earnings subject to being reported to the Federal Internal Revenue Service under arbitrage requirements are excludable.

(4) Governmental units will negotiate the amount of allowable interest whenever cash payments (interest, depreciation, use allowances, and contributions) exceed the governmental unit's cash payments and other contributions attributable to that portion of real property used for Federal awards.

27. **Lobbying.** The cost of certain influencing activities associated with obtaining grants, contracts, cooperative agreements, or loans is an unallowable cost. Lobbying with respect to certain grants, contracts, cooperative agreements, and loans shall be governed by the common rule, "New Restrictions on Lobbying" published at 55 FR 6736 (February 26, 1990), including definitions, and the Office of Management and Budget "Government-wide Guidance for New Restrictions on Lobbying" and notices published at 54 FR 52306 (December 20, 1989), 55 FR 24540 (June 15, 1990), and 57 FR 1772 (January 15, 1992), respectively.

28. **Maintenance, operations, and repairs.** Unless prohibited by law, the cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, necessary maintenance, normal repairs and alterations, and the like are allowable to the extent that they: (1) keep property (including Federal property, unless otherwise provided for) in an efficient operating condition, (2) do not add to the permanent value of property or appreciably prolong its intended life, and (3) are not otherwise included in rental or other charges for space. Costs which add to the permanent value of property or appreciably prolong its intended life shall be treated as capital expenditures (see sections 15 and 19).

29. **Materials and supplies.** The cost of materials and supplies is allowable. Purchases should be charged at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received. Withdrawals from general stores or

stockrooms should be charged at cost under any recognized method of pricing, consistently applied. Incoming transportation charges are a proper part of materials and supply costs.

30. Memberships, subscriptions, and professional activities.

- a. Costs of the governmental unit's memberships in business, technical, and professional organizations are allowable.
- b. Costs of the governmental unit's subscriptions to business, professional, and technical periodicals are allowable.
- c. Costs of meetings and conferences where the primary purpose is the dissemination of technical information, including meals, transportation, rental of meeting facilities, and other incidental costs are allowable.
- d. Costs of membership in civic and community, social organizations are allowable as a direct cost with the approval of the Federal awarding agency.
- e. Costs of membership in organizations substantially engaged in lobbying are unallowable.

31. Motor pools. The costs of a service organization which provides automobiles to user governmental units at a mileage or fixed rate and/or provides vehicle maintenance, inspection, and repair services are allowable.

32. Pre-award costs. Pre-award costs are those incurred prior to the effective date of the award directly pursuant to the negotiation and in anticipation of the award where such costs are necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award and only with the written approval of the awarding agency.

33. Professional service costs.

- a. Cost of professional and consultant services rendered by persons or organizations that are members of a particular profession or possess a special skill, whether or not officers or employees of the governmental unit, are allowable, subject to section 14 when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government.
- b. Retainer fees supported by evidence of bona fide services available or rendered are allowable.

34. Proposal costs. Costs of preparing proposals for potential Federal awards are allowable. Proposal costs should normally be treated as indirect costs and should be allocated to all activities of the governmental unit utilizing the cost allocation plan and indirect cost rate proposal. However, proposal costs may be charged directly to Federal awards with the prior approval of the Federal awarding agency.

35. Publication and printing costs. Publication costs, including the costs of printing (including the processes of composition, plate-making, press work, and binding, and the end products produced by such processes), distribution, promotion, mailing, and general handling are allowable.

36. Rearrangements and alterations. Costs incurred for ordinary and normal rearrangement and alteration of facilities are allowable. Special arrangements and alterations costs incurred specifically for a Federal award are allowable with the prior approval of the Federal awarding agency.

37. Reconversion costs. Costs incurred in the restoration or rehabilitation of the governmental unit's facilities to approximately the same condition existing immediately prior to commencement of Federal awards, less costs related to normal wear and tear, are allowable.

38. Rental costs.

- a. Subject to the limitations described in subsections b. through d. of this section, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and, the type, life expectancy, condition, and value of the property leased.
- b. Rental costs under sale and leaseback arrangements are allowable only up to the amount that would be allowed had the governmental unit continued to own the property.

c. Rental costs under less-than-arms-length leases are allowable only up to the amount that would be allowed had title to the property vested in the governmental unit. For this purpose, less-than-arms-length leases include, but are not limited to, those where:

- (1) One party to the lease is able to control or substantially influence the actions of the other;
- (2) Both parties are parts of the same governmental unit; or
- (3) The governmental unit creates an authority or similar entity to acquire and lease the facilities to the governmental unit and other parties.

d. Rental costs under leases which are required to be treated as capital leases under GAAP are allowable only up to the amount that would be allowed had the governmental unit purchased the property on the date the lease agreement was executed. This amount would include expenses such as depreciation or use allowance, maintenance, and insurance. The provisions of Financial Accounting Standards Board Statement 13 shall be used to determine whether a lease is a capital lease. Interest costs related to capital leases are allowable to the extent they meet the criteria in section 26.

39. Taxes.

a. Taxes that a governmental unit is legally required to pay are allowable, except for self-assessed taxes that disproportionately affect Federal programs or changes in tax policies that disproportionately affect Federal programs. This provision becomes effective for taxes paid during the governmental unit's first fiscal year that begins on or after January 1, 1998, and applies thereafter.

b. Gasoline taxes, motor vehicle fees, and other taxes that are in effect user fees for benefits provided to the Federal Government are allowable.

c. This provision does not restrict the authority of Federal agencies to identify taxes where Federal participation is inappropriate. Where the identification of the amount of unallowable taxes would require an inordinate amount of effort, the cognizant agency may accept a reasonable approximation thereof.

40. Training. The cost of training provided for employee development is allowable.

41. Travel costs.

a. **General.** Travel costs are allowable for expenses for transportation, lodging, subsistence, and related items incurred by employees traveling on official business. Such costs may be charged on an actual cost basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip, and results in charges consistent with those normally allowed in like circumstances in non-federally-sponsored activities. Notwithstanding the provisions of section 23, travel costs of officials covered by that section, when specifically related to Federal awards, are allowable with the prior approval of a grantor agency.

b. **Lodging and subsistence.** Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered reasonable and allowable only to the extent such costs do not exceed charges normally allowed by the governmental unit in its regular operations as a result of the governmental unit's policy. In the absence of a written governmental unit policy regarding travel costs, the rates and amounts established under subchapter I of Chapter 57 of Title 5, United States Code "Travel and Subsistence Expenses; Mileage Allowances," or by the Administrator of General Services, or the President (or his designee) pursuant to any provisions of such subchapter shall be used as guidance for travel under Federal awards (41 U.S.C. 420, "Travel Expenses of Government Contractors").

c. **Commercial air travel.** Airfare costs in excess of the customary standard (coach or equivalent) airfare, are unallowable except when such accommodations would: require circuitous routing, require travel during unreasonable hours, excessively prolong travel, greatly increase the duration of the flight, result in increased cost that would offset transportation savings, or offer accommodations not reasonably adequate for the medical needs of the traveler. Where a governmental unit can reasonably demonstrate to the awarding agency either the nonavailability of customary standard airfare or Federal Government contract airfare for individual trips or, on an overall basis, that it is the governmental unit's practice to make routine use of such airfare, specific determinations of nonavailability will generally not be questioned by the Federal Government, unless a pattern of avoidance is detected. However, in order for airfare costs in excess of the customary standard commercial airfare to be allowable, e.g., use of first-class airfare, the governmental unit must justify and document on a case-by-case basis the applicable condition(s) set forth above.

d. **Air travel by other than commercial carrier.** Cost of travel by governmental unit-owned, -leased, or -chartered aircraft, as

used in this section, includes the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, interest, insurance, and other related costs. Costs of travel via governmental unit-owned, -leased, or -chartered aircraft are unallowable to the extent they exceed the cost of allowable commercial air travel, as provided for in subsection c.

42. Underrecovery of costs under Federal agreements. Any excess costs over the Federal contribution under one award agreement are unallowable under other award agreements.

ATTACHMENT C
Circular No. A-87

STATE/LOCAL-WIDE CENTRAL SERVICE COST ALLOCATION PLANS

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A. General.

1. Most governmental units provide certain services, such as motor pools, computer centers, purchasing, accounting, etc., to operating agencies on a centralized basis. Since federally-supported awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan provides that process. All costs and other data used to distribute the costs included in the plan

should be supported by formal accounting and other records that will support the propriety of the costs assigned to Federal awards.

2. Guidelines and illustrations of central service cost allocation plans are provided in a brochure published by the Department of Health and Human Services entitled "A Guide for State and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government." A copy of this brochure may be obtained from the Superintendent of Documents, U.S. Government Printing Office.

B. Definitions.

1. "Billed central services" means central services that are billed to benefitted agencies and/or programs on an individual fee-for-service or similar basis. Typical examples of billed central services include computer services, transportation services, insurance, and fringe benefits.
2. "Allocated central services" means central services that benefit operating agencies but are not billed to the agencies on a fee-for-service or similar basis. These costs are allocated to benefitted agencies on some reasonable basis. Examples of such services might include general accounting, personnel administration, purchasing, etc.
3. "Agency or operating agency" means an organizational unit or sub-division within a governmental unit that is responsible for the performance or administration of awards or activities of the governmental unit.

C. Scope of the Central Service Cost Allocation Plans. The central service cost allocation plan will include all central service costs that will be claimed (either as a billed or an allocated cost) under Federal awards and will be documented as described in section E. Costs of central services omitted from the plan will not be reimbursed.

D. Submission Requirements.

1. Each State will submit a plan to the Department of Health and Human Services for each year in which it claims central service costs under Federal awards. The plan should include (a) a projection of the next year's allocated central service cost (based either on actual costs for the most recently completed year or the budget projection for the coming year), and (b) a reconciliation of actual allocated central service costs to the estimated costs used for either the most recently completed year or the year immediately preceding the most recently completed year.
2. Each local government that has been designated as a "major local government" by the Office of Management and Budget (OMB) is also required to submit a plan to its cognizant agency annually. OMB periodically lists major local governments in the Federal Register.
3. All other local governments claiming central service costs must develop a plan in accordance with the requirements described in this Circular and maintain the plan and related supporting documentation for audit. These local governments are not required to submit their plans for Federal approval unless they are specifically requested to do so by the cognizant agency. Where a local government only receives funds as a sub-recipient, the primary recipient will be responsible for negotiating

indirect cost rates and/or monitoring the sub-recipient's plan.

4. All central service cost allocation plans will be prepared and, when required, submitted within six months prior to the beginning of each of the governmental unit's fiscal years in which it proposes to claim central service costs. Extensions may be granted by the cognizant agency on a case-by-case basis.

E. Documentation Requirements for Submitted Plans. The documentation requirements described in this section may be modified, expanded, or reduced by the cognizant agency on a case-by-case basis. For example, the requirements may be reduced for those central services which have little or no impact on Federal awards. Conversely, if a review of a plan indicates that certain additional information is needed, and will likely be needed in future years, it may be routinely requested in future plan submissions. Items marked with an asterisk (*) should be submitted only once; subsequent plans should merely indicate any changes since the last plan.

1. General. All proposed plans must be accompanied by the following: an organization chart sufficiently detailed to show operations including the central service activities of the State/local government whether or not they are shown as benefiting from central service functions; a copy of the Comprehensive Annual Financial Report (or a copy of the Executive Budget if budgeted costs are being proposed) to support the allowable costs of each central service activity included in the plan; and, a certification (see subsection 4.) that the plan was prepared in accordance with this Circular, contains only allowable costs, and was prepared in a manner that treated similar costs consistently among the various Federal awards and between Federal and non-Federal awards/activities.

2. Allocated central services. For each allocated central service, the plan must also include the following: a brief description of the service*, an identification of the unit rendering the service and the operating agencies receiving the service, the items of expense included in the cost of the service, the method used to distribute the cost of the service to benefitted agencies, and a summary schedule showing the allocation of each service to the specific benefitted

agencies. If any self-insurance funds or fringe benefits costs are treated as allocated (rather than billed) central services, documentation discussed in subsections 3.b. and c. shall also be included.

3. Billed services.

a. General. The information described below shall be provided for all billed central services, including internal service funds, self-insurance funds, and fringe benefit funds.

b. Internal service funds.

(1) For each internal service fund or similar activity with an operating budget of \$5 million or more, the plan shall include: a brief description of each service; a balance sheet for each fund based on individual accounts contained in the governmental unit's accounting system; a revenue/expenses statement, with revenues broken out by source, e.g., regular billings, interest earned, etc.; a listing of all non-operating transfers (as defined by Generally Accepted Accounting Principles (GAAP)) into and out of the fund; a description of the procedures (methodology) used to charge the costs of each service to users, including how billing rates are determined; a schedule of current rates; and, a schedule comparing total revenues (including imputed revenues) generated by the service to the allowable costs of the service, as determined under this Circular, with an explanation of how variances will be handled.

(2) Revenues shall consist of all revenues generated by the service, including unbilled and uncollected revenues. If some users were not billed for the services (or were not billed at the full rate for that class of users), a schedule showing the full imputed revenues associated with these users shall be provided. Expenses shall be broken out by object cost categories (e.g., salaries, supplies, etc.).

c. Self-insurance funds. For each self-insurance fund, the plan shall include: the fund balance sheet; a statement of revenue and expenses including a summary of billings and claims paid by agency; a listing of all non-operating transfers into and out of the fund; the type(s) of risk(s) covered by the fund (e.g., automobile liability, workers' compensation, etc.); an explanation of how the level of fund contributions are determined, including a copy of the current actuarial report (with the actuarial assumptions used) if the contributions are determined on an actuarial basis; and, a description of the procedures used to charge or allocate fund contributions to benefitted activities. Reserve levels in excess of claims (1) submitted and adjudicated but not paid, (2) submitted but not adjudicated, and (3) incurred but not submitted must be identified and explained.

d. Fringe benefits. For fringe benefit costs, the plan shall include: a listing of fringe benefits provided to covered employees, and the overall annual cost of each type of benefit; current fringe benefit policies*; and procedures used to charge or allocate the costs of the benefits to benefitted activities. In addition, for pension and post-retirement health insurance plans, the following information shall be provided: the governmental unit's funding policies, e.g., legislative bills, trust agreements, or State-mandated contribution rules, if different from actuarially determined rates; the pension plan's costs accrued for the year;

the amount funded, and date(s) of funding; a copy of the current actuarial report (including the actuarial assumptions); the plan trustee's report; and, a schedule from the activity showing the value of the interest cost associated with late funding.

4. Required certification. Each central service cost allocation plan will be accompanied by a certification in the following form:

CERTIFICATE OF COST ALLOCATION PLAN

This is to certify that I have reviewed the cost allocation plan submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal [identify date] to establish cost allocations or billings for [identify period covered by plan] are allowable in accordance with the requirements of OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments," and the Federal award(s) to which they apply. Unallowable costs have been adjusted for in allocating costs as indicated in the cost allocation plan.

(2) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the awards to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently.

I declare that the foregoing is true and correct.

Governmental Unit: _____

Signature: _____

Name of Official: _____

Title: _____

Date of Execution: _____

F. Negotiation and Approval of Central Service Plans.

1. All proposed central service cost allocation plans that are required to be submitted will be reviewed, negotiated, and approved by the Federal cognizant agency on a timely basis. The cognizant agency will review the proposal within six months of receipt of the proposal and either negotiate/approve the proposal or advise the governmental unit of the additional documentation needed to support/evaluate the proposed plan or the changes required to make the proposal acceptable. Once an agreement with the governmental unit has been reached, the agreement will be accepted and used by all Federal agencies, unless prohibited or limited by statute. Where a Federal funding agency has reason to believe that special operating factors affecting its awards necessitate special consideration, the funding agency will, prior to the time the plans are negotiated, notify the cognizant agency.

2. The results of each negotiation shall be formalized in a written agreement between the cognizant agency and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The results of the negotiation shall be made available to all Federal agencies for their use.

3. Negotiated cost allocation plans based on a proposal later found to have included costs that: (a) are unallowable (i) as specified by law or regulation, (ii) as identified in Attachment B of this Circular, or (iii) by the terms and conditions of Federal awards, or (b) are unallowable because they are clearly not allocable to Federal awards, shall be adjusted, or a refund shall be made at the option of the Federal cognizant agency. These adjustments or refunds are designed to correct the plans and do not constitute a reopening of the negotiation.

G. Other Policies.

1. Billed central service activities. Each billed central service activity must separately account for all revenues (including imputed revenues) generated by the service, expenses incurred to furnish the service, and profit/loss.

2. Working capital reserves. Internal service funds are dependent upon a reasonable level of working capital reserve to operate

from one billing cycle to the next. Charges by an internal service activity to provide for the establishment and maintenance of a reasonable level of working capital reserve, in addition to the full recovery of costs, are allowable. A working capital reserve as part of retained earnings of up to 60 days cash expenses for normal operating purposes is considered reasonable. A working capital reserve exceeding 60 days may be approved by the cognizant Federal agency in exceptional cases.

3. Carry-forward adjustments of allocated central service costs. Allocated central service costs are usually negotiated and approved for a future fiscal year on a "fixed with carry-forward" basis. Under this procedure, the fixed amounts for the future year covered by agreement are not subject to adjustment for that year. However, when the actual costs of the year involved become known, the differences between the fixed amounts previously approved and the actual costs will be carried forward and used as an adjustment to the fixed amounts established for a later year. This "carry-forward" procedure applies to all central services whose costs were fixed in the approved plan. However, a carry-forward adjustment is not permitted, for a central service activity that was not included in the approved plan, or for unallowable costs that must be reimbursed immediately.

4. Adjustments of billed central services. Billing rates used to charge Federal awards shall be based on the estimated costs of providing the services, including an estimate of the allocable central service costs. A comparison of the revenue generated by each billed service (including total revenues whether or not billed or collected) to the actual allowable costs of the service will be made at least annually, and an adjustment will be made for the difference between the revenue and the allowable costs. These adjustments will be made through one of the following adjustment methods: (a) a cash refund to the Federal Government for the Federal share of the adjustment, (b) credits to the amounts charged to the individual programs, (c) adjustments to future billing rates, or (d) adjustments to allocated central service costs. Adjustments to allocated central services will not be permitted where the total amount of the adjustment for a particular service (Federal share and non-Federal share exceeds \$500,000.

5. Records retention. All central service cost allocation plans and related documentation used as a basis for claiming costs under Federal awards must be retained for audit in accordance with the records retention requirements contained in the Common Rule.

6. Appeals. If a dispute arises in the negotiation of a plan between the cognizant agency and the governmental unit, the dispute shall be resolved in accordance with the appeals procedures of the cognizant agency.

7. OMB assistance. To the extent that problems are encountered among the Federal agencies and/or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

ATTACHMENT D
Circular No. A-87

PUBLIC ASSISTANCE COST ALLOCATION PLANS

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F. Unallowable Costs

A. General. Federally-financed programs administered by State public assistance agencies are funded predominately by the

Department of Health and Human Services (HHS). In support of its stewardship requirements, HHS has published requirements for the development, documentation, submission, negotiation, and approval of public assistance cost allocation plans in Subpart E of 45 CFR Part 95. All administrative costs (direct and indirect) are normally charged to Federal awards by implementing the public assistance cost allocation plan. This Attachment extends these requirements to all Federal agencies whose programs are administered by a State public assistance agency. Major federally-financed programs typically administered by State public assistance agencies include: Aid to Families with Dependent Children, Medicaid, Food Stamps, Child Support Enforcement, Adoption Assistance and Foster Care, and Social Services Block Grant.

B. Definitions.

1. "State public assistance agency" means a State agency administering or supervising the administration of one or more public assistance programs operated by the State as identified in Subpart E of 45 CFR Part 95. For the purpose of this Attachment, these programs include all programs administered by the State public assistance agency.

2. "State public assistance agency costs" means all costs incurred by, or allocable to, the State public assistance agency, except expenditures for financial assistance, medical vendor

payments, food stamps, and payments for services and goods provided directly to program recipients.

C. Policy. State public assistance agencies will develop, document and implement, and the Federal Government will review, negotiate, and approve, public assistance cost allocation plans in accordance with Subpart E of 45 CFR Part 95. The plan will include all programs administered by the State public assistance agency. Where a letter of approval or disapproval is transmitted to a State public assistance agency in accordance with Subpart E, the letter will apply to all Federal agencies and programs. The remaining sections of this Attachment (except for the requirement for certification) summarize the provisions of Subpart E of 45 CFR Part 95.

D. Submission, Documentation, and Approval of Public Assistance Cost Allocation Plans.

1. State public assistance agencies are required to promptly submit amendments to the cost allocation plan to HHS for review and approval.

2. Under the coordination process outlined in subsection E, affected Federal agencies will review all new plans and plan amendments and provide comments, as appropriate, to HHS. The effective date of the plan or plan amendment will be the first day of the quarter following the submission of the plan or amendment, unless another date is specifically approved by HHS. HHS, as the cognizant agency acting on behalf of all affected Federal agencies, will, as necessary, conduct negotiations with the State public assistance agency and will inform the State agency of the action taken on the plan or plan amendment.

E. Review of Implementation of Approved Plans.

1. Since public assistance cost allocation plans are of a narrative nature, the review during the plan approval process consists of evaluating the appropriateness of the proposed groupings of costs (cost centers) and the related allocation bases. As such, the Federal Government needs some assurance that the cost allocation plan has been implemented as approved. This is accomplished by reviews by the funding agencies, single audits, or audits conducted by the cognizant audit agency.

2. Where inappropriate charges affecting more than one funding agency are identified, the cognizant HHS cost negotiation office will be advised and will take the lead in resolving the issue(s) as provided for in Subpart E of 45 CFR Part 95.

3. If a dispute arises in the negotiation of a plan or from a disallowance involving two or more funding agencies, the dispute shall be resolved in accordance with the appeals

procedures set out in 45 CFR Part 75. Disputes involving only one funding agency will be resolved in accordance with the funding agency's appeal process.

4. To the extent that problems are encountered among the Federal agencies and/or governmental units in connection with the negotiation and approval process, the Office of Management and Budget will lend assistance, as required, to resolve such problems in a timely manner.

F. Unallowable Costs. Claims developed under approved cost allocation plans will be based on allowable costs as identified in this Circular. Where unallowable costs have been claimed and reimbursed, they will be refunded to the program that reimbursed the unallowable cost using one of the following methods: (a) a cash refund, (b) offset to a subsequent claim, or (c) credits to the amounts charged to individual awards.

ATTACHMENT E
Circular No. A-87

STATE AND LOCAL INDIRECT COST RATE PROPOSALS

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A. General:

1. Indirect costs are those that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned directly to Federal awards and other activities as appropriate, indirect costs are those remaining to be allocated to benefitted cost objectives. A cost may not be allocated to a Federal award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal award as a direct cost.
2. Indirect costs include (a) the indirect costs originating in each department or agency of the governmental unit carrying out Federal awards and (b) the costs of central governmental services distributed through the central service cost allocation plan (as described in Attachment C) and not otherwise treated as direct costs.
3. Indirect costs are normally charged to Federal awards by the use of an indirect cost rate. A separate indirect cost rate(s) is usually necessary for each department or agency of the governmental unit claiming indirect costs under Federal awards. Guidelines and illustrations of indirect cost proposals are provided in a brochure published by the Department of Health and Human Services entitled "A Guide for State and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government." A copy of this brochure may be obtained from the Superintendent of Documents, U.S. Government Printing Office.
4. Because of the diverse characteristics and accounting practices of governmental units, the types of costs which may be classified as indirect costs cannot be specified in all situations. However, typical examples of indirect costs may include certain State/local-wide central service costs, general administration of the grantee department or agency, accounting and personnel services performed within the grantee department or agency, depreciation or use allowances on buildings and equipment, the costs of operating and maintaining facilities, etc.
5. This Attachment does not apply to State public assistance agencies. These agencies should refer instead to Attachment D.

B. Definitions.

1. "Indirect cost rate proposal" means the documentation prepared by a governmental unit or subdivision thereof to substantiate its request for the establishment of an indirect cost rate.
2. "Indirect cost rate" is a device for determining in a reasonable manner the proportion of indirect costs each program should bear. It is the ratio (expressed as a percentage) of the indirect costs to a direct cost base.
3. "Indirect cost pool" is the accumulated costs that jointly benefit two or more programs or other cost objectives.
4. "Base" means the accumulated direct costs (normally either total direct salaries and wages or total direct costs exclusive of any extraordinary or distorting expenditures) used to distribute indirect costs to individual Federal awards. The direct cost base selected should result in each award bearing a fair share of the indirect costs in reasonable relation to the benefits received from the costs.
5. "Predetermined rate" means an indirect cost rate, applicable to a specified current or future period, usually the governmental unit's fiscal year. This rate is based on an estimate of the costs to be incurred during the period. Except under very unusual circumstances, a predetermined rate is not subject to adjustment. (Because of legal constraints, predetermined rates are not permitted for Federal contracts; they may, however, be used for grants or cooperative agreements.) Predetermined rates may not be used by governmental units that have not submitted and negotiated the rate with the cognizant agency. In view of the potential advantages offered by this procedure, negotiation of predetermined rates for indirect costs for a period of two to four years should be the norm in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of indirect costs during the ensuing

accounting periods.

6. "Fixed rate" means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual, allowable costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.

7. "Provisional rate" means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on Federal awards pending the establishment of a "final" rate for that period.

8. "Final rate" means an indirect cost rate applicable to a specified past period which is based on the actual allowable costs of the period. A final audited rate is not subject to adjustment.

9. "Base period" for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to activities performed in that period. The base period normally should coincide with the governmental unit's fiscal year, but in any event, shall be so selected as to avoid inequities in the allocation of costs.

C. Allocation of Indirect Costs and Determination of Indirect Cost Rates.

1. General.

a. Where a governmental unit's department or agency has only one major function, or where all its major functions benefit from the indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures as described in subsection 2.

b. Where a governmental unit's department or agency has several major functions which benefit from its indirect costs in varying degrees, the allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefitted functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual awards and other activities included in that function by means of an indirect cost rate(s).

c. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in subsections 2, 3 and 4.

2. Simplified method.

a. Where a grantee agency's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by (1) classifying the grantee agency's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual Federal awards. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. This method should also be used where a governmental unit's department or agency has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to that department or agency is relatively small.

b. Both the direct costs and the indirect costs shall exclude capital expenditures and unallowable costs. However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

c. The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

3. Multiple allocation base method.

a. Where a grantee agency's indirect costs benefit its major functions in varying degrees, such costs shall be accumulated into separate cost groupings. Each grouping shall then be allocated individually to benefitted functions by means of a base which best measures the relative benefits.

b. The cost groupings should be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping should constitute a pool of expenses that are of like character in terms of the functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The number of separate groupings should be held within practical limits, taking into consideration the materiality of the amounts involved and

the degree of precision needed.

c. Actual conditions must be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefitted functions. When an allocation can be made by assignment of a cost grouping directly to the function benefitted, the allocation shall be made in that manner. When the expenses in a grouping are more general in nature, the allocation should be made through the use of a selected base which produces results that are equitable to both the Federal Government and the governmental unit. In general, any cost element or related factor associated with the governmental unit's activities is potentially adaptable for use as an allocation base provided that: (1) it can readily be expressed in terms of dollars or other quantitative measures (total direct costs, direct salaries and wages, staff hours applied, square feet used, hours of usage, number of documents processed, population served, and the like), and (2) it is common to the benefitted functions during the base period.

d. Except where a special indirect cost rate(s) is required in accordance with subsection 4, the separate groupings of indirect costs allocated to each major function shall be aggregated and treated as a common pool for that function. The costs in the common pool shall then be distributed to individual Federal awards included in that function by use of a single indirect cost rate.

e. The distribution base used in computing the indirect cost rate for each function may be (1) total direct costs (excluding capital expenditures and other distorting items such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution. An indirect cost rate should be developed for each separate indirect cost pool developed. The rate in each case should be stated as the percentage relationship between the particular indirect cost pool and the distribution base identified with that pool.

4. Special indirect cost rates.

a. In some instances, a single indirect cost rate for all activities of a grantee department or agency or for each major function of the agency may not be appropriate. It may not take into account those different factors which may substantially affect the indirect costs applicable to a particular program or group of programs. The factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the organizational arrangements used, or any combination thereof. When a particular award is carried out in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to that award. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used, provided that: (1) the rate differs significantly from the rate which would have been developed under subsections 2. and 3., and (2) the award to which the rate would apply is material in amount.

b. Although this Circular adopts the concept of the full allocation of indirect costs, there are some Federal statutes which restrict the reimbursement of certain indirect costs. Where such restrictions exist, it may be necessary to develop a special rate for the affected award. Where a "restricted rate" is required, the procedure for developing a non-restricted rate will be used except for the additional step of the elimination from the indirect cost pool those costs for which the law prohibits reimbursement.

D. Submission and Documentation of Proposals.

1. Submission of indirect cost rate proposals.

a. All departments or agencies of the governmental unit desiring to claim indirect costs under Federal awards must prepare an indirect cost rate proposal and related documentation to support those costs. The proposal and related documentation must be retained for audit in accordance with the records retention requirements contained in the Common Rule.

b. A governmental unit for which a cognizant agency assignment has been specifically designated must submit its indirect cost rate proposal to its cognizant agency. The Office of Management and Budget (OMB) will periodically publish lists of governmental units identifying the appropriate Federal cognizant agencies. The cognizant agency for all governmental units or agencies not identified by OMB will be determined based on the Federal agency providing the largest amount of Federal funds. In these cases, a governmental unit must develop an indirect cost proposal in accordance with the requirements of this Circular and maintain the proposal and related supporting documentation for audit. These governmental units are not required to submit their proposals unless they are specifically requested to do so by the cognizant agency. Where a local government only receives funds as a sub-recipient, the primary recipient will be responsible for negotiating and/or monitoring the sub-recipient's plan.

c. Each Indian tribal government desiring reimbursement of indirect costs must submit its indirect cost proposal to the Department of the Interior (its cognizant Federal agency).

d. Indirect cost proposals must be developed (and, when required, submitted) within six months after the close of the

governmental unit's fiscal year, unless an exception is approved by the cognizant Federal agency. If the proposed central service cost allocation plan for the same period has not been approved by that time, the indirect cost proposal may be prepared including an amount for central services that is based on the latest federally-approved central service cost allocation plan. The difference between these central service amounts and the amounts ultimately approved will be compensated for by an adjustment in a subsequent period.

2. Documentation of proposals. The following shall be included with each indirect cost proposal:

a. The rates proposed, including subsidiary work sheets and other relevant data, cross referenced and reconciled to the financial data noted in subsection b. Allocated central service costs will be supported by the summary table included in the approved central service cost allocation plan. This summary table is not required to be submitted with the indirect cost proposal if the central service cost allocation plan for the same fiscal year has been approved by the cognizant agency and is available to the funding agency.

b. A copy of the financial data (financial statements, comprehensive annual financial report, executive budgets, accounting reports, etc.) upon which the rate is based. Adjustments resulting from the use of unaudited data will be recognized, where appropriate, by the Federal cognizant agency in a subsequent proposal.

c. The approximate amount of direct base costs incurred under Federal awards. These costs should be broken out between salaries and wages and other direct costs.

d. A chart showing the organizational structure of the agency during the period for which the proposal applies, along with a functional statement(s) noting the duties and/or responsibilities of all units that comprise the agency. (Once this is submitted, only revisions need be submitted with subsequent proposals.)

3. Required certification. Each indirect cost rate proposal shall be accompanied by a certification in the following form:

CERTIFICATE OF INDIRECT COSTS

This is to certify that I have reviewed the indirect cost rate proposal submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal [identify date] to establish billing or final indirect costs rates for [identify period covered by rate] are allowable in accordance with the requirements of the Federal award(s) to which they apply and OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments." Unallowable costs have been adjusted for in allocating costs as indicated in the cost allocation plan.

(2) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently and the Federal Government will be notified of any accounting changes that would affect the predetermined rate.

I declare that the foregoing is true and correct.

Governmental Unit: _____

Signature: _____

Name of Official: _____

Title: _____

Date of Execution: _____

E. Negotiation and Approval of Rates.

1. Indirect cost rates will be reviewed, negotiated, and approved by the cognizant Federal agency on a timely basis. Once a rate has been agreed upon, it will be accepted and used by all Federal agencies unless prohibited or limited by statute. Where a Federal funding agency has reason to believe that special operating factors affecting its awards necessitate special indirect cost rates, the funding agency will, prior to the time the rates are negotiated, notify the cognizant Federal agency.
2. The use of predetermined rates, if allowed, is encouraged where the cognizant agency has reasonable assurance based on past experience and reliable projection of the grantee agency's costs, that the rate is not likely to exceed a rate based on actual costs. Long-term agreements utilizing predetermined rates extending over two or more years are encouraged, where appropriate.
3. The results of each negotiation shall be formalized in a written agreement between the cognizant agency and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute, or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The agreed upon rates shall be made available to all Federal agencies for their use.
4. Refunds shall be made if proposals are later found to have included costs that (a) are unallowable (i) as specified by law or regulation, (ii) as identified in Attachment B of this Circular, or (iii) by the terms and conditions of Federal awards, or (b) are unallowable because they are clearly not allocable to Federal awards. These adjustments or refunds will be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).

F. Other Policies.

1. Fringe benefit rates. If overall fringe benefit rates are not approved for the governmental unit as part of the central service cost allocation plan, these rates will be reviewed, negotiated and approved for individual grantee agencies during the indirect cost negotiation process. In these cases, a proposed fringe benefit rate computation should accompany the indirect cost proposal. If fringe benefit rates are not used at the grantee agency level (i.e., the agency specifically identifies fringe benefit costs to individual employees), the governmental unit should so advise the cognizant agency.
2. Billed services provided by the grantee agency. In some cases, governmental units provide and bill for services similar to those covered by central service cost allocation plans (e.g., computer centers). Where this occurs, the governmental unit should be guided by the requirements in Attachment C relating to the development of billing rates and documentation requirements, and should advise the cognizant agency of any billed services. Reviews of these types of services (including reviews of costing/billing methodology, profits or losses, etc.) will be made on a case-by-case basis as warranted by the circumstances involved.
3. Indirect cost allocations not using rates. In certain situations, a governmental unit, because of the nature of its awards, may be required to develop a cost allocation plan that distributes indirect (and, in some cases, direct) costs to the specific funding sources. In these cases, a narrative cost allocation methodology should be developed, documented, maintained for audit, or submitted, as appropriate, to the cognizant agency for review, negotiation, and approval.
4. Appeals. If a dispute arises in a negotiation of an indirect cost rate (or other rate) between the cognizant agency and the governmental unit, the dispute shall be resolved in accordance with the appeals procedures of the cognizant agency.
5. Collection of unallowable costs and erroneous payments. Costs specifically identified as unallowable and charged to Federal awards either directly or indirectly will be refunded (including interest chargeable in accordance with applicable Federal agency regulations).
6. OMB assistance. To the extent that problems are encountered among the Federal agencies and/or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

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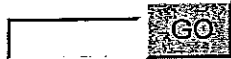
OMB Circular A-97

Appendix E

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Office of Management and Budget



Circular No. A-97

August 29, 1969

OMB Circular A-97

Circular A-97,
Transmittal
Memorandum

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Rules and regulations permitting Federal agencies to provide specialized or technical services to State and local units of government under Title III of the Intergovernmental Cooperation Act of 1968

1. Purpose
2. Background
3. Reservation of existing authority
4. Definitions
5. Policy
6. Types of services that may be provided
7. Conditions under which services may be provided
8. Reports to Congress
9. Effective Date
10. Inquiries

1. **Purpose.** This Circular promulgates the rules and regulations which the Director of the Bureau of the Budget is authorized to issue pursuant to Section 302 of the Intergovernmental Cooperation Act of 1968 (P.L. 90-577; 82 Stat. 1102). It also provides for the coordination of the action of Federal departments and agencies (hereinafter referred to as "Federal agencies") in exercising the authority contained in Title III of said Act as directed by the President's Memorandum of November 8, 1968 (33 F.R. 16487).

2. Background.

a. Title III of the Intergovernmental Cooperation Act of 1968 is intended to:

1. Encourage intergovernmental cooperation in the conduct of specialized or technical services and provisions of facilities essential to the administration of State or local governmental activities.
2. Enable State and local governments to avoid unnecessary duplication of special service functions.
3. Authorize Federal agencies which do not have such authority to provide reimbursable specialized and technical services to State and local governments.

b. Title III of the Act authorizes the head of any Federal agency, within his discretion and upon written request from a State or political subdivision thereof, to provide specialized or technical services, upon payment to the Federal agency by the unit of government making the request, of salaries and all other identifiable direct or indirect costs of performing such services.

c. Title III of the Act requires that:

1. Any services provided pursuant to Title III shall include only those which the Director of the Bureau of the Budget through rules and regulations determines Federal agencies have special competence to provide.
2. The Director's rules and regulations shall be consistent with, and in furtherance of, the Government's policy of relying on the private enterprise system to provide those services which are reasonably and expeditiously available through ordinary business channels.
3. All moneys received by any Federal agency in payment of furnishing specialized and technical services under Title III of the Act shall be deposited to the credit of the principal appropriation from which the cost of providing such services has been paid or is to be charged.
4. The head of any Federal agency shall furnish annually to the respective Committees on Government Operations of the Senate and House of Representatives a summary report on the scope of the services provided under Title III.

3. **Reservation of existing authority.** The authority contained in Title III of the Act and this Circular is in addition to, and does not supersede, any existing authority now possessed by any Federal agency with respect to furnishing services, whether on a reimbursable or non-reimbursable basis, to State and local units of government. The reporting and other requirements and conditions contained in this Circular shall not apply to services furnished under such existing authorities.

4. **Definitions.** For purposes of this Circular:

- a. The term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State, but does not include the governments of the political subdivisions of a State.
 - b. The terms "political subdivision" or "local government" mean a local unit of government, including specifically a county, municipality, city, town, township, or a school or other special district created by or pursuant to State law, or combinations thereof.
 - c. "Specialized or technical services" means statistical and other studies and compilations, development projects, technical tests and evaluations, technical information, training activities, surveys, reports, documents, and any other similar service functions which any Federal agency is especially equipped and authorized by law to perform.
-

5. **Policy.** Federal agencies will cooperate to the maximum extent possible with State and local units of government to provide such specialized or technical services as may be authorized. Such services shall generally supplement, not supplant existing services, and Federal agencies should not provide services with full reimbursement under this Circular which have heretofore been furnished for less than full reimbursement under other authorities, unless specifically requested to do so.

6. **Types of services that may be provided.**

- a. It is hereby determined that Federal agencies have the special competence to provide, and may provide the following specialized or technical services, and facilities related thereto, pursuant to

Title III of the Intergovernmental Cooperation Act of 1968:

1. Any existing statistical or other studies and compilations, results of technical tests and evaluations, technical information, surveys, reports, and documents, and any such materials which may be developed or prepared in the future to meet the needs of the Federal Government or to carry out the normal program responsibilities of the Federal agencies involved.
 2. Preparation of statistical and other studies and compilations, technical tests and evaluations, technical information, surveys, reports, and documents, and assistance in the conduct of such activities and in the preparation of such materials, provided they are of a type similar to those which the Federal agency is authorized by law to conduct or prepare.
 3. Training of the type which the Federal agency is authorized by law to conduct for Federal personnel and others or which is similar to such training.
 4. Technical aid in the preparation of proposals for development and other projects for which the Federal agency provides grants-in-aid or other assistance, provided such aid primarily strengthens the ability of the recipient in developing its own capacity to prepare proposals.
 5. Technical information, data processing, communications and personnel management systems services which the Federal agency normally provides for itself or others under existing authorities.
- b. Any of the above specialized or technical services provided to the States and their political subdivisions under existing authorities may also be provided under Title III of the Act and the terms of this Circular.
- c. If a Federal agency receives a request for specialized or technical services which are not covered in subparagraph a above and which it believes is consistent with the Act and which it has a special competence to provide, it should forward such request to the Bureau of the Budget for action. Similarly, if there is doubt as to whether the service requested is covered by subparagraph a, the request should be forwarded to the Bureau of the Budget for action.

7. Conditions under which services may be provided. The specialized or technical services provided under Title III of the Act and this Circular may be provided, in the discretion of the heads of Federal agencies, only under the following conditions:

- a. Such services will be provided only to the States, political subdivisions thereof, and combinations or associations of such governments or their agencies and instrumentalities.
- b. Such services will be provided only upon the written request of a State or a political subdivision thereof. Requests will normally be made by the chief executives of such entities and will be addressed to the head of the agency involved.
- c. Such services will not be provided unless the agency providing the services is providing similar services for its own use under the policies set forth in the Bureau of the Budget Circular No. A-76, "Policies for acquiring commercial or industrial products and services for Government use" (Revised August 30, 1967). In addition, in accordance with the policies set forth in Circular No. A-76, the requesting entity must certify that such services cannot be procured reasonably and expeditiously by it through ordinary business channels.
- d. Such services will not be provided if they require any additions of staff or if they involve outlays for additional equipment or other facilities solely for the purpose of providing such services, except where the costs thereof are charged to the user of such services. Further, no staff additions may be made which impede the implementation of or adherence to the employment ceilings contained in the Bureau of the Budget allowance letters.
- e. Such services will be provided only upon payment or provision for reimbursement to the Federal agency involved, by the unit of government making the request, of salaries and all other

identifiable direct and indirect costs of performing such services. For cost determination purposes, Federal agencies will be guided by the policies set forth in the Bureau of the Budget Circular No. A-25, "User Charges" (September 23, 1959).

f. Any payments or reimbursements received by Federal agencies for the costs of such services will be deposited to the credit of the principal appropriation or other account from which the costs of providing the services have been paid or are to be charged.

g. In the event a request for a service is denied, the Federal agency shall furnish the entity making the request with a statement indicating the reasons for the denial.

8. **Reports to Congress.** The head of each Federal agency will furnish annually to the respective Committees on Government Operations of the Senate and House of Representatives a summary report on the scope of the services provided under Title III of the Act and this Circular. Such reports will be prepared as of the end of each calendar year and will indicate the nature of the services rendered, the names of the States and political subdivisions involved, where practical, and the cost of the work. Services provided under other authorities are not to be included in the reports. Copies of the reports will be submitted to the Bureau of the Budget not later than March 30 of each year.

9. **Effective date.** This Circular is effective immediately. It supersedes the "Interim Regulation under Title III of the Intergovernmental Cooperation Act of 1968 (P.L. 90-577)," dated December 19, 1968, concerning training by the U.S. Civil Service Commission.

10. **Inquiries.** Inquiries regarding this Circular may be addressed to the Office of Executive Management, Bureau of the Budget, Washington, D.C. 20503, or telephone (202) 395-4934

(Government dial code 103-4934).

ROBERT P. MAYO
Director

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Circular A-97, Transmittal Memorandum

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Office of Management and Budget

CIRCULAR NO. A-97
REVISED
TRANSMITTAL MEMORANDUM No. 1

March 27, 1981

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Reports to Congress

This Transmittal Memorandum revises Circular No. A-97, "Rules and regulations permitting Federal agencies to provide specialized or technical services to State and local units of government under Title III of the Intergovernmental and Cooperation Act of 1968," by rescinding paragraph 8, Reports to Congress. The Congressional reporting requirement referenced in paragraph 8 of the Circular was mandated under Section 304 of the Intergovernmental Cooperation Act of 1968. Section 304 was repealed by the Congressional Reports Elimination Act of 1980. The reports to the Congress are no longer required by statute or by the Circular.

David A. Stockman
Director

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OMB Circular A-102

Appendix E

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Office of Management and Budget

August 29, 1997

MEMORANDUM FOR THE RECORD

FROM: Norwood J. Jackson
Deputy Controller
Office of Federal Financial Management

SUBJECT: Recompilation of OMB Circular A-102

I certify that the attached document constitutes a recompilation of Office of Management and Budget Circular A-102, "Grants and Cooperative Agreements with State and Local Governments." The recompilation consists of the last complete revision of the Circular published at 59 FR 52224 (dated October 7, 1994, published October 14, 1994), as further amended at 62 FR 45934 (August 29, 1997).

CIRCULAR A-102 (REVISED 10/7/94, As Further Amended 8/29/97)

CIRCULAR NO. A-102
Revised

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Grants and Cooperative Agreements with State and Local Governments

1. **Purpose.** This Circular establishes consistency and uniformity among Federal agencies in the management of grants and cooperative agreements with State, local, and federally-recognized Indian tribal governments. This revision supersedes Office of Management and Budget (OMB) Circular No. A-102, dated March 3, 1988.

2. **Authority.** This Circular is issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended; Reorganization Plan No. 2 of 1970; Executive Order 11541 and the Chief Financial Officers Act, 31 U.S.C. 503. Also included in the Circular are standards to ensure consistent implementation of sections 202, 203, and 204 of the Intergovernmental Cooperation Act of 1968, the Office of Federal Procurement Policy Act Amendments of 1983, and sections 6301-08, title 31, United States Code.

3. **Background.** On March 12, 1987, the President directed all affected agencies to issue a grants management common rule to adopt government-wide terms and conditions for grants to State and local governments, and they did so. In 1988, OMB revised the Circular to provide guidance to Federal agencies on other matters not covered in the common rule.

4. **Required Action.** Consistent with their legal obligations, all Federal agencies administering programs that involve grants and cooperative agreements with State, local and Indian tribal governments (grantees) shall follow the policies in this Circular. If the enabling legislation for a specific grant program prescribes policies or requirements that differ from those in this Circular, the provisions of the enabling legislation shall govern.

5. **OMB Responsibilities.** OMB may grant deviations from the requirements of this Circular when permissible under existing law. However, in the interest of uniformity and consistency, deviations will be permitted only in exceptional circumstances.

6. **Information Contact.** Further information concerning this Circular may be obtained from:

Office of Federal Financial Management
Office of Management and Budget
Room 6025
New Executive Office Building
Washington, DC 20503
(202) 395-3993

7. **Termination Review Date.** The Circular will have a policy review three years from the date of issuance.

8. **Effective Date.** The Circular is effective on publication.

Attachment

ATTACHMENT
Circular No. A-102

GRANTS AND COOPERATIVE AGREEMENTS WITH STATE AND LOCAL GOVERNMENTS

1. Pre-Award Policies.

a. **Use of grants and cooperative agreements.** Sections 6301-08, title 31, United States Code govern the use of grants, contracts and cooperative agreements. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, "substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement."

b. Advance Public Notice and Priority Setting.

(1) Federal agencies shall provide the public with an advance notice in the **Federal Register**, or by other appropriate means, of intended funding priorities for discretionary assistance programs, unless funding priorities are established by Federal statute. These priorities shall be approved by a policy level official.

(2) Whenever time permits, agencies shall provide the public an opportunity to comment on intended funding priorities.

(3) All discretionary grant awards in excess of \$25,000 shall be reviewed for consistency with agency priorities by a policy level official.

c. Standard Forms for Applying for Grants and Cooperative Agreements.

(1) Agencies shall use the following standard application forms unless they obtain Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 35) and the 5 CFR Part 1320, "Controlling Paperwork Burdens on the Public":

SF-424 Facesheet
SF-424a Budget Information (Non-Construction)
SF-424b Standard Assurances (Non-Construction)
SF-424c Budget Information (Construction)
SF-424d Standard Assurances (Construction)

When different or additional information is needed to comply with legislative requirements or to meet specific program needs, agencies shall also obtain prior OMB approval.

(2) A preapplication shall be used for all construction, land acquisition and land development projects or programs when the need for Federal funding exceeds \$100,000, unless the Federal agency determines that a preapplication is not needed. A preapplication is used to:

- (a) Establish communication between the agency and the applicant,
 - (b) Determine the applicant's eligibility,
 - (c) Determine how well the project can compete with similar projects from others, and
 - (d) Discourage any proposals that have little or no chance for Federal funding before applicants incur significant costs in preparing detailed applications.
- (3) Agencies shall use the Budget Information (Construction) and Standard Assurances (Construction) when the major purpose of the project or program is construction, land acquisition or land development.
- (4) Agencies may specify how and whether budgets shall be shown by functions or activities within the program or project.
- (5) Agencies should generally include a request for a program narrative statement which is based on the following instructions:
- (a) Objectives and need for assistance. Pinpoint any relevant physical, economic, social, financial, institutional, or other problems requiring a solution. Demonstrate the need for the assistance and state the principal and subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used. Any relevant data based on planning studies should be included or footnoted.
 - (b) Results or Benefits Expected. Identify costs and benefits to be derived. For example, show how the facility will be used. For land acquisition or development projects, explain how the project will benefit the public.
 - (c) Approach. Outline a plan of action pertaining to the scope and detail how the proposed work will be accomplished for each assistance program. Cite factors which might accelerate or decelerate the work and reasons for taking this approach as opposed to others. Describe any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements. Provide for each assistance program quantitative projections of the accomplishments to be achieved, if possible. When accomplishments cannot be quantified, list the activities in chronological order to show the schedule of accomplishments and target expected completion dates. Identify the kinds of data to be collected and maintained, and discuss the criteria to be used to evaluate the results and success of the project. Explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. List each organization, cooperator, consultant, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.
 - (d) Geographic location. Give a precise location of the project and area to be served by the proposed project. Maps or other graphic aids may be attached.
 - (e) If applicable, provide the following information: for research and demonstration assistance requests, present a biographical sketch of the program director with the following information: name, address, telephone number, background, and other qualifying experience for the project. Also, list the name, training and background for other key personnel engaged in the project. Describe the relationship between this project and other work planned, anticipated, or underway under Federal assistance. Explain the reason for all requests for supplemental assistance and justify the need for additional funding. Discuss accomplishments to date and list in chronological order a schedule of accomplishments, progress or milestones anticipated with the new funding request. If there have been significant changes in the project objectives, location, approach or time delays, explain and justify. For other requests for changes, or amendments, explain the reason for the change(s). If the scope or objectives have changed or an extension of time is necessary, explain the circumstances and justify. If the total budget has been exceeded or if the individual budget items have changes more than the prescribed limits, explain and justify the change and its effect on the project.
- (6) Additional assurances shall not be added to those contained on the standard forms, unless specifically required by statute.
- d. **Debarment and Suspension.** Federal agencies shall not award assistance to applicants that are debarred or suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549. Agencies shall establish procedures for the effective use of the List of Parties Excluded from Federal Procurement or Nonprocurement programs to assure that they do not award assistance to listed parties in violation of the Executive Order. Agencies shall also establish procedures to provide for effective use and/or dissemination of the list to assure that their grantees and subgrantees (including contractors) at any tier do not make awards in violation of the nonprocurement debarment and suspension common rule.

e. Awards and Adjustments.

(1) Ordinarily awards shall be made at least ten days prior to the beginning of the grant period.

(2) Agencies shall notify grantees immediately of any anticipated adjustments in the amount of an award. This notice shall be provided as early as possible in the funding period. Reductions in funding shall apply only to periods after notice is provided. Whenever an agency adjusts the amount of an award, it shall also make an appropriate adjustment to the amount of any required matching or cost sharing.

f. Carryover Balances. Agencies shall be prepared to identify to OMB the amounts of carryover balances (e.g., the amounts of estimated grantee unobligated balances available for carryover into subsequent grant periods). This presentation shall detail the fiscal and programmatic (level of effort) impact in the following period.

g. Special Conditions or Restrictions. Agencies may impose special conditions or restrictions on awards to "high risk" applicants/grantees in accordance with section __.12 of the grants management common rule. Agencies shall document use of the "Exception" provisions of section __.6 and "High-risk" provisions of section __.12 of the grants management common rule.

h. Waiver of Single State Agency Requirements.

(1) Requests to agencies from the Governors, or other duly constituted State authorities, for waiver of "single" State agency requirements in accordance with section 31 U.S.C. 6504, "Use of existing State or multi-member agency to administer grant programs," shall be given expeditious handling and, whenever possible, an affirmative response.

(2) When it is necessary to refuse a request for waiver of "single" State agency requirements under section 204 of the Intergovernmental Corporation Act, the Federal grantor agency shall advise OMB prior to informing the State that the request cannot be granted. The agency shall indicate to OMB the reasons for the denial of the request.

(3) Legislative proposals embracing grant-in-aid programs shall avoid inclusion of proposals for "single" State agencies in the absence of compelling reasons to do otherwise. In addition, existing requirements in present grant-in-aid programs shall be reviewed and legislative proposals developed for the removal of these restrictive provisions.

i. Patent Rights. Agencies shall use the standard patent rights clause specified in "Rights to Inventions made by Non-profit Organizations and Small Business Firms" (37 CFR Part 401), when providing support for research and development.

j. Metric System of Measurement. The Metric Conversion Act of 1975, as amended, declares that the metric system is the preferred measurement system for U.S. trade and commerce. The Act requires each Federal agency to establish a date(s), in consultation with the Secretary of Commerce, when the metric system of measurement will be used in the agency's procurement, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of federally-funded activities. Heads of departments and agencies shall establish a process for a policy level and program level review of proposed exceptions to metric usage in grants programs. Executive Order 12770 ("Metric Usage in Federal Government Programs") elaborates on implementation of the Act.

2. Post-award Policies.

a. Cash Management. Agency methods and procedures for transferring funds shall minimize the time elapsing between the transfer to recipients of grants and cooperative agreements and the recipient's need for the funds.

(1) Such transfers shall be made consistent with program purposes, applicable law and Treasury regulations contained in 31 CFR Part 205, Federal Funds Transfer Procedures.

(2) Where letters-of-credit are used to provide funds, they shall be in the same amount as the award.

b. Grantee Financial Management Systems. In assessing the adequacy of an applicant's financial management system, the awarding agency shall rely on readily available sources of information, such as audit reports, to the maximum extent possible. If additional information is necessary to assure prudent management of agency funds, it shall be obtained from the applicant or from an on-site review.

c. Financial Status Reports.

(1) Federal agencies shall require grantees to use the SF-269, Financial Status Report-Long Form, or SF-269a, Financial Status Report-Short Form, to report the status of funds for all non-construction projects or programs. Federal agencies need not require the Financial Status Report when the SF-270, Request for Advance or Reimbursement, or SF-272, Report of Federal Cash Transactions, is determined to provide adequate information.

(2) Federal agencies shall not require grantees to report on the status of funds by object class category of expenditure (e.g., personnel, travel, equipment).

(3) If reporting on the status of funds by programs, functions or activities within the project or program is required by statute or regulation, Federal agencies shall instruct grantees to use block 12, Remarks, on the SF-269, or a supplementary form approved by the OMB under the Paperwork Reduction Act of 1980.

(4) Federal agencies shall prescribe whether the reporting shall be on a cash or an accrual basis. If the Federal agency requires accrual information and the grantees's accounting records are not normally kept on an accrual basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through an analysis of the documentation on hand.

d. Contracting With Small and Minority Firms, Women's Business Enterprises and Labor Surplus Area Firms. It is national policy to award a fair share of contracts to small and minority business firms. Grantees shall take similar appropriate affirmative action to support of women's enterprises and are encouraged to procure goods and services from labor surplus areas.

e. Program Income.

(1) Agencies shall encourage grantees to generate program income to help defray program costs. However, Federal agencies shall not permit grantees to use grant-acquired assets to compete unfairly with the private sector.

(2) Federal agencies shall instruct grantees to deduct program income from total program costs as specified in the grants management common rule at paragraph __.25 (g)(1), unless agency regulations or the terms of the grant award state otherwise. Authorization for recipients to follow the other alternatives in paragraph __.25 (g) (2) and (3) shall be granted sparingly.

f. Site Visits and Technical Assistance. Agencies shall conduct site visits only as warranted by program or project needs. Technical assistance site visits shall be provided only (1) in response to requests from grantees, (2) based on demonstrated program need, or (3) when recipients are designated "high risk" under section __.12 of the grants management common rule.

g. Infrastructure Investment. Agencies shall encourage grantees to consider the provisions of the common rule at Section __.31 and Executive Order 12803 ("Infrastructure Privatization"). This includes reviewing and modifying procedures affecting the management and disposition of federally-financed infrastructure owned by State and local governments, with their requests to sell or lease infrastructure assets, consistent with the criteria in Section 4 of the Order. Related guidance contained in Executive Order 12893 ("Principles for Federal Infrastructure Investments") requiring economic analysis and the development of investment options, including public-private partnership, shall also be applied. On March 7, 1994, OMB issued guidance on Executive Order 12893 in OMB Bulletin No. 94-16.

h. Resource Conservation and Recovery Act. Agencies shall implement the Resource Conservation and Recovery Act of 1976 (RCRA) (42 U.S.C. 6962). Any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with Section 6002 of RCRA. Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA). Current guidelines are contained in 40 CFR Parts 247-253. State and local recipients of grants, loans, cooperative agreements or other instruments funded by appropriated Federal funds shall give preference in procurement programs to the purchase of recycled products pursuant to the EPA guidelines.

i. Procurement of Goods and Services. Agencies should be aware of and comply with the requirement enacted in Section 623 of the Treasury, Postal Service and General Government Appropriations Act, 1993, and reenacted in Section 621 of the fiscal year 1994 Appropriations Act. This Section requires grantees to specify in any announcement of the awarding of contracts with an aggregate value of \$500,000 or more, the amount of Federal funds that will be used to finance the acquisitions.

j. Conditional exemptions.

(1) OMB authorizes conditional exemption from OMB administrative requirements and cost principles circulars for certain Federal programs with statutorily-authorized consolidated planning and consolidated administrative funding, that are identified by a Federal agency and approved by the head of the Executive department or establishment. A Federal agency shall consult with OMB during its consideration of whether to grant such an exemption.

(2) To promote efficiency in State and local program administration, when Federal non-entitlement programs with common purposes have specific statutorily-authorized consolidated planning and consolidated administrative funding and where most of the State agency's resources come from non-Federal sources, Federal agencies may exempt these covered State-administered, non-entitlement grant programs from certain OMB grants management requirements. The exemptions would be from all but the allocability of costs provisions of OMB Circulars A-87 (Attachment A, subsection C.3), "Cost Principles for State, Local, and Indian Tribal Governments," A-21 (Section C, subpart 4), "Cost Principles for Educational Institutions," and A-122 (Attachment A, subsection A.4), "Cost Principles for Non-Profit Organizations," and from all of the administrative requirements provisions of OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," and the agencies' grants management common rule.

(3) When a Federal agency provides this flexibility, as a prerequisite to a State's exercising this option, a State must adopt its own written fiscal and administrative requirements for expending and accounting for all funds, which are consistent with the provisions of OMB Circular A-87, and extend such policies to all subrecipients. These fiscal and administrative requirements must be sufficiently specific to ensure that: funds are used in compliance with all applicable Federal statutory and regulatory provisions, costs are reasonable and necessary for operating these programs, and funds are not be used for general expenses required to carry out other responsibilities of a State or its subrecipients.

3. After-the-grant Policies.

a. **Closeout.** Federal agencies shall notify grantees in writing before the end of the grant period of final reports that shall be due, the dates by which they must be received, and where they must be submitted. Copies of any required forms and instructions for their completion shall be included with this notification. The Federal actions that must precede closeout are:

- (1) Receipt of all required reports,
- (2) Disposition or recovery of federally-owned assets (as distinct from property acquired under the grant), and
- (3) Adjustment of the award amount and the amount of Federal cash paid the recipient.

b. **Annual Reconciliation of Continuing Assistance Awards.** Federal agencies shall reconcile continuing awards at least annually and evaluate program performance and financial reports.

Items to be reviewed include:

- (1) A comparison of the recipient's work plan to its progress reports and project outputs,
- (2) the Financial Status Report (SF-269),
- (3) Request(s) for payment,
- (4) Compliance with any matching, level of effort or maintenance of effort requirement, and
- (5) A review of federally-owned property (as distinct from property acquired under the grant).

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OMB Circular A-133

Appendix E
Help Text Only

Office of Management and Budget

Circular No. A-133 - Revised June 24, 1997 Audits of States, Local Governments, and Non-Profit Organizations

(Accompanying Federal Register Materials – Audits of States, Local Governments, and Non-Profit Organizations June 30, 1997)

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Audits of States, Local Governments, and Non-Profit Organizations

1. **Purpose.** This Circular is issued pursuant to the Single Audit Act of 1984, P.L. 98-502, and the Single Audit Act Amendments of 1996, P.L. 104-156. It sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of States, local governments, and non-profit organizations expending Federal awards.

2. **Authority.** Circular A-133 is issued under the authority of sections 503, 1111, and 7501 *et seq.* of title 31, United States Code, and Executive Orders 8248 and 11541.

3. **Rescission and Supersession.** This Circular rescinds Circular A-128, "Audits of State and Local Governments," issued April 12, 1985, and supersedes the prior Circular A-133, "Audits of Institutions of Higher Education and Other Non-Profit Institutions," issued April 22, 1996. For effective dates, see paragraph 10.

4. **Policy.** Except as provided herein, the standards set forth in this Circular shall be applied by all Federal agencies. If any statute specifically prescribes policies or specific requirements that differ from the standards provided herein, the provisions of the subsequent statute shall govern.

Federal agencies shall apply the provisions of the sections of this Circular to non-Federal entities, whether they are recipients expending Federal awards received directly from Federal awarding agencies, or are subrecipients expending Federal awards received from a pass-through entity (a recipient or another subrecipient).

This Circular does not apply to non-U.S. based entities expending Federal awards received either directly as a recipient or indirectly as a subrecipient.

5. **Definitions.** The definitions of key terms used in this Circular are contained in § ____ 105 in the Attachment to this Circular.

6. **Required Action.** The specific requirements and responsibilities of Federal agencies and non-Federal entities are set forth in the Attachment to this Circular. Federal agencies making awards to non-Federal entities, either directly or indirectly, shall adopt the language in the Circular in codified regulations as provided in Section 10 (below), unless different provisions are required by Federal statute or are approved by the Office of Management and Budget (OMB).

7. **OMB Responsibilities.** OMB will review Federal agency regulations and implementation of this Circular, and will provide interpretations of policy requirements and assistance to ensure uniform, effective and efficient implementation.

8. **Information Contact.** Further information concerning Circular A-133 may be obtained by contacting the Financial Standards and Reporting Branch, Office of Federal Financial Management, Office of Management and Budget, Washington, DC 20503, telephone (202) 395-3993.

9. **Review Date.** This Circular will have a policy review three years from the date of issuance.

10. **Effective Dates.** The standards set forth in § ____ 400 of the Attachment to this Circular, which apply directly to Federal agencies, shall be effective July 1, 1996, and shall apply to audits of fiscal years beginning after June 30, 1996, except as

otherwise specified in § ___.400(a).

The standards set forth in this Circular that Federal agencies shall apply to non-Federal entities shall be adopted by Federal agencies in codified regulations not later than 60 days after publication of this final revision in the **Federal Register**, so that they will apply to audits of fiscal years beginning after June 30, 1996, with the exception that § ___.305(b) of the Attachment applies to audits of fiscal years beginning after June 30, 1998. The requirements of Circular A-128, although the Circular is rescinded, and the 1990 version of Circular A-133 remain in effect for audits of fiscal years beginning on or before June 30, 1996.

/S/

Franklin D. Raines
Director

Attachment

PART __ --AUDITS OF STATES, LOCAL GOVERNMENTS, AND NON-PROFIT ORGANIZATIONS

Subpart A--General

Sec.

- ___ .100 Purpose.
- ___ .105 Definitions.

Subpart B--Audits

- ___ .200 Audit requirements.
- ___ .205 Basis for determining Federal awards expended.
- ___ .210 Subrecipient and vendor determinations.
- ___ .215 Relation to other audit requirements.
- ___ .220 Frequency of audits.
- ___ .225 Sanctions.
- ___ .230 Audit costs.
- ___ .235 Program-specific audits.

Subpart C--Auditees

- ___ .300 Auditee responsibilities.
- ___ .305 Auditor selection.
- ___ .310 Financial statements.
- ___ .315 Audit findings follow-up.
- ___ .320 Report submission.

Subpart D--Federal Agencies and Pass-Through Entities

- ___ .400 Responsibilities.
- ___ .405 Management decision.

Subpart E--Auditors

- ___ .500 Scope of audit.
- ___ .505 Audit reporting.
- ___ .510 Audit findings.
- ___ .515 Audit working papers.
- ___ .520 Major program determination.
- ___ .525 Criteria for Federal program risk.
- ___ .530 Criteria for a low-risk auditee.

Appendix A to Part __ - Data Collection Form (Form SF-SAC).

Appendix B to Part __ - Circular A-133 Compliance Supplement.

Subpart A—General**§ __.100 Purpose.**

This part sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards.

§ __.105 Definitions.

Auditee means any non-Federal entity that expends Federal awards which must be audited under this part. **Auditor** means an auditor, that is a public accountant or a Federal, State or local government audit organization, which meets the general standards specified in generally accepted government auditing standards (GAGAS). The term auditor does not include internal auditors of non-profit organizations.

Audit finding means deficiencies which the auditor is required by § __.510(a) to report in the schedule of findings and questioned costs.

CFDA number means the number assigned to a Federal program in the Catalog of Federal Domestic Assistance (CFDA).

Cluster of programs means a grouping of closely related programs that share common compliance requirements. The types of clusters of programs are research and development (R&D), student financial aid (SFA), and other clusters. "Other clusters" are as defined by the Office of Management and Budget (OMB) in the compliance supplement or as designated by a State for Federal awards the State provides to its subrecipients that meet the definition of a cluster of programs. When designating an "other cluster," a State shall identify the Federal awards included in the cluster and advise the subrecipients of compliance requirements applicable to the cluster, consistent with § __.400(d)(1) and § __.400(d)(2), respectively. A cluster of programs shall be considered as one program for determining major programs, as described in § __.520, and, with the exception of R&D as described in § __.200(c), whether a program-specific audit may be elected.

Cognizant agency for audit means the Federal agency designated to carry out the responsibilities described in § __.400(a).

Compliance supplement refers to the Circular A-133 Compliance Supplement, included as Appendix B to Circular A-133, or such documents as OMB or its designee may issue to replace it. This document is available from the Government Printing Office, Superintendent of Documents, Washington, DC 20402-9325.

Corrective action means action taken by the auditee that:

- (1) Corrects identified deficiencies;
- (2) Produces recommended improvements; or
- (3) Demonstrates that audit findings are either invalid or do not warrant auditee action.

Federal agency has the same meaning as the term agency in Section 551(1) of title 5, United States Code.

Federal award means Federal financial assistance and Federal cost-reimbursement contracts that non-Federal entities receive directly from Federal awarding agencies or indirectly from pass-through entities. It does not include procurement contracts, under grants or contracts, used to buy goods or services from vendors. Any audits of such vendors shall be covered by the terms and conditions of the contract. Contracts to operate Federal Government owned, contractor operated facilities (GOCOs) are excluded from the requirements of this part.

Federal awarding agency means the Federal agency that provides an award directly to the recipient.

Federal financial assistance means assistance that non-Federal entities receive or administer in the form of grants, loans, loan guarantees, property (including donated surplus property), cooperative agreements, interest subsidies, insurance, food commodities, direct appropriations, and other assistance, but does not include amounts received as reimbursement for services rendered to individuals as described in § __.205(h) and § __.205(i).

Federal program means:

- (1) All Federal awards to a non-Federal entity assigned a single number in the CFDA.
- (2) When no CFDA number is assigned, all Federal awards from the same agency made for the same purpose should be combined and considered one program.
- (3) Notwithstanding paragraphs (1) and (2) of this definition, a cluster of programs. The types of clusters of programs are:
 - (i) Research and development (R&D);
 - (ii) Student financial aid (SFA); and
 - (iii) "Other clusters," as described in the definition of cluster of programs in this section.

GAGAS means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits.

Generally accepted accounting principles has the meaning specified in generally accepted auditing standards issued by the American Institute of Certified Public Accountants (AICPA).

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Internal control means a process, effected by an entity's management and other personnel, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

- (1) Effectiveness and efficiency of operations;
- (2) Reliability of financial reporting; and
- (3) Compliance with applicable laws and regulations.

Internal control pertaining to the compliance requirements for Federal programs (Internal control over Federal programs) means a process--effected by an entity's management and other personnel--designed to provide reasonable assurance regarding the achievement of the following objectives for Federal programs:

- (1) Transactions are properly recorded and accounted for to:
 - (i) Permit the preparation of reliable financial statements and Federal reports;
 - (ii) Maintain accountability over assets; and
 - (iii) Demonstrate compliance with laws, regulations, and other compliance requirements;
- (2) Transactions are executed in compliance with:
 - (i) Laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on a Federal program; and
 - (ii) Any other laws and regulations that are identified in the compliance supplement; and
- (3) Funds, property, and other assets are safeguarded against loss from unauthorized use or disposition.

Loan means a Federal loan or loan guarantee received or administered by a non-Federal entity.

Local government means any unit of local government within a State, including a county, borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any

other instrumentality of local government.

Major program means a Federal program determined by the auditor to be a major program in accordance with § ___.520 or a program identified as a major program by a Federal agency or pass-through entity in accordance with § ___.215(c).

Management decision means the evaluation by the Federal awarding agency or pass-through entity of the audit findings and corrective action plan and the issuance of a written decision as to what corrective action is necessary.

Non-Federal entity means a State, local government, or non-profit organization.

Non-profit organization means:

(1) any corporation, trust, association, cooperative, or other organization that:

(i) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

(ii) Is not organized primarily for profit; and

(iii) Uses its net proceeds to maintain, improve, or expand its operations; and

(2) The term **non-profit organization** includes non-profit institutions of higher education and hospitals.

OMB means the Executive Office of the President, Office of Management and Budget.

Oversight agency for audit means the Federal awarding agency that provides the predominant amount of direct funding to a recipient not assigned a cognizant agency for audit. When there is no direct funding, the Federal agency with the predominant indirect funding shall assume the oversight responsibilities. The duties of the oversight agency for audit are described in § ___.400(b).

Pass-through entity means a non-Federal entity that provides a Federal award to a subrecipient to carry out a Federal program.

Program-specific audit means an audit of one Federal program as provided for in § ___.200(c) and § ___.235.

Questioned cost means a cost that is questioned by the auditor because of an audit finding:

(1) Which resulted from a violation or possible violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the use of Federal funds, including funds used to match Federal funds;

(2) Where the costs, at the time of the audit, are not supported by adequate documentation; or

(3) Where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.

Recipient means a non-Federal entity that expends Federal awards received directly from a Federal awarding agency to carry out a Federal program.

Research and development (R&D) means all research activities, both basic and applied, and all development activities that are performed by a non-Federal entity. **Research** is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function. **Development** is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

Single audit means an audit which includes both the entity's financial statements and the Federal awards as described in § ___.500.

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands,

Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, any multi-State, regional, or interstate entity which has governmental functions, and any Indian tribe as defined in this section.

Student Financial Aid (SFA) includes those programs of general student assistance, such as those authorized by Title IV of the Higher Education Act of 1965, as amended, (20 U.S.C. 1070 et seq.) which is administered by the U.S. Department of Education, and similar programs provided by other Federal agencies. It does not include programs which provide fellowships or similar Federal awards to students on a competitive basis, or for specified studies or research.

Subrecipient means a non-Federal entity that expends Federal awards received from a pass-through entity to carry out a Federal program, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency. Guidance on distinguishing between a subrecipient and a vendor is provided in § ___.210.

Types of compliance requirements refers to the types of compliance requirements listed in the compliance supplement. Examples include: activities allowed or unallowed; allowable costs/cost principles; cash management; eligibility; matching; level of effort, earmarking; and, reporting.

Vendor means a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a Federal program. These goods or services may be for an organization's own use or for the use of beneficiaries of the Federal program. Additional guidance on distinguishing between a subrecipient and a vendor is provided in § ___.210.

Subpart B--Audits

§ ___.200 Audit requirements.

(a) **Audit required.** Non-Federal entities that expend \$300,000 or more in a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of this part. Guidance on determining Federal awards expended is provided in § ___.205.

(b) **Single audit.** Non-Federal entities that expend \$300,000 or more in a year in Federal awards shall have a single audit conducted in accordance with § ___.500 except when they elect to have a program-specific audit conducted in accordance with paragraph (c) of this section.

(c) **Program-specific audit election.** When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's laws, regulations, or grant agreements do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with § ___.235. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.

(d) **Exemption when Federal awards expended are less than \$300,000.** Non-Federal entities that expend less than \$300,000 a year in Federal awards are exempt from Federal audit requirements for that year, except as noted in § ___.215(a), but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and General Accounting Office (GAO).

(e) **Federally Funded Research and Development Centers (FFRDC).** Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.

§ ___.205 Basis for determining Federal awards expended.

(a) **Determining Federal awards expended.** The determination of when an award is expended should be based on when the activity related to the award occurs. Generally, the activity pertains to events that require the non-Federal entity to comply with laws, regulations, and the provisions of contracts or grant agreements, such as: expenditure/expense transactions associated with grants, cost-reimbursement contracts, cooperative agreements, and direct appropriations; the disbursement of funds passed through to subrecipients; the use of loan proceeds under loan and loan guarantee programs; the receipt of property; the receipt of surplus property; the receipt or use of program income; the distribution or consumption of food commodities; the disbursement of amounts entitling the non-Federal entity to an interest subsidy; and, the period when insurance is in force.

(b) **Loan and loan guarantees (loans).** Since the Federal Government is at risk for loans until the debt is repaid, the following

guidelines shall be used to calculate the value of Federal awards expended under loan programs, except as noted in paragraphs (c) and (d) of this section:

- (1) Value of new loans made or received during the fiscal year; plus
- (2) Balance of loans from previous years for which the Federal Government imposes continuing compliance requirements; plus
- (3) Any interest subsidy, cash, or administrative cost allowance received.

(c) **Loan and loan guarantees (loans) at institutions of higher education.** When loans are made to students of an institution of higher education but the institution does not make the loans, then only the value of loans made during the year shall be considered Federal awards expended in that year. The balance of loans for previous years is not included as Federal awards expended because the lender accounts for the prior balances.

(d) **Prior loan and loan guarantees (loans).** Loans, the proceeds of which were received and expended in prior-years, are not considered Federal awards expended under this part when the laws, regulations, and the provisions of contracts or grant agreements pertaining to such loans impose no continuing compliance requirements other than to repay the loans.

(e) **Endowment funds.** The cumulative balance of Federal awards for endowment funds which are federally restricted are considered awards expended in each year in which the funds are still restricted.

(f) **Free rent.** Free rent received by itself is not considered a Federal award expended under this part. However, free rent received as part of an award to carry out a Federal program shall be included in determining Federal awards expended and subject to audit under this part.

(g) **Valuing non-cash assistance.** Federal non-cash assistance, such as free rent, food stamps, food commodities, donated property, or donated surplus property, shall be valued at fair market value at the time of receipt or the assessed value provided by the Federal agency.

(h) **Medicare.** Medicare payments to a non-Federal entity for providing patient care services to Medicare eligible individuals are not considered Federal awards expended under this part.

(i) **Medicaid.** Medicaid payments to a subrecipient for providing patient care services to Medicaid eligible individuals are not considered Federal awards expended under this part unless a State requires the funds to be treated as Federal awards expended because reimbursement is on a cost-reimbursement basis.

(j) **Certain loans provided by the National Credit Union Administration.** For purposes of this part, loans made from the National Credit Union Share Insurance Fund and the Central Liquidity Facility that are funded by contributions from insured institutions are not considered Federal awards expended.

§ .210 Subrecipient and vendor determinations.

(a) **General.** An auditee may be a recipient, a subrecipient, and a vendor. Federal awards expended as a recipient or a subrecipient would be subject to audit under this part. The payments received for goods or services provided as a vendor would not be considered Federal awards. The guidance in paragraphs (b) and (c) of this section should be considered in determining whether payments constitute a Federal award or a payment for goods and services.

(b) **Federal award.** Characteristics indicative of a Federal award received by a subrecipient are when the organization:

- (1) Determines who is eligible to receive what Federal financial assistance;
- (2) Has its performance measured against whether the objectives of the Federal program are met;
- (3) Has responsibility for programmatic decision making;
- (4) Has responsibility for adherence to applicable Federal program compliance requirements; and
- (5) Uses the Federal funds to carry out a program of the organization as compared to providing goods or services for a program of the pass-through entity.

(c) **Payment for goods and services.** Characteristics indicative of a payment for goods and services received by a vendor are when the organization:

- (1) Provides the goods and services within normal business operations;
- (2) Provides similar goods or services to many different purchasers;
- (3) Operates in a competitive environment;
- (4) Provides goods or services that are ancillary to the operation of the Federal program; and
- (5) Is not subject to compliance requirements of the Federal program.

(d) **Use of judgment in making determination.** There may be unusual circumstances or exceptions to the listed characteristics. In making the determination of whether a subrecipient or vendor relationship exists, the substance of the relationship is more important than the form of the agreement. It is not expected that all of the characteristics will be present and judgment should be used in determining whether an entity is a subrecipient or vendor.

(e) **For-profit subrecipient.** Since this part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The contract with the for-profit subrecipient should describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the contract, and post-award audits.

(f) **Compliance responsibility for vendors.** In most cases, the auditee's compliance responsibility for vendors is only to ensure that the procurement, receipt, and payment for goods and services comply with laws, regulations, and the provisions of contracts or grant agreements. Program compliance requirements normally do not pass through to vendors. However, the auditee is responsible for ensuring compliance for vendor transactions which are structured such that the vendor is responsible for program compliance or the vendor's records must be reviewed to determine program compliance. Also, when these vendor transactions relate to a major program, the scope of the audit shall include determining whether these transactions are in compliance with laws, regulations, and the provisions of contracts or grant agreements.

§ __.215 Relation to other audit requirements.

(a) **Audit under this part in lieu of other audits.** An audit made in accordance with this part shall be in lieu of any financial audit required under individual Federal awards. To the extent this audit meets a Federal agency's needs, it shall rely upon and use such audits. The provisions of this part neither limit the authority of Federal agencies, including their Inspectors General, or GAO to conduct or arrange for additional audits (e.g., financial audits, performance audits, evaluations, inspections, or reviews) nor authorize any auditee to constrain Federal agencies from carrying out additional audits. Any additional audits shall be planned and performed in such a way as to build upon work performed by other auditors.

(b) **Federal agency to pay for additional audits.** A Federal agency that conducts or contracts for additional audits shall, consistent with other applicable laws and regulations, arrange for funding the full cost of such additional audits.

(c) **Request for a program to be audited as a major program.** A Federal agency may request an auditee to have a particular Federal program audited as a major program in lieu of the Federal agency conducting or arranging for the additional audits. To allow for planning, such requests should be made at least 180 days prior to the end of the fiscal year to be audited. The auditee, after consultation with its auditor, should promptly respond to such request by informing the Federal agency whether the program would otherwise be audited as a major program using the risk-based audit approach described in § __.520 and, if not, the estimated incremental cost. The Federal agency shall then promptly confirm to the auditee whether it wants the program audited as a major program. If the program is to be audited as a major program based upon this Federal agency request, and the Federal agency agrees to pay the full incremental costs, then the auditee shall have the program audited as a major program. A pass-through entity may use the provisions of this paragraph for a subrecipient.

§ __.220 Frequency of audits.

Except for the provisions for biennial audits provided in paragraphs (a) and (b) of this section, audits required by this part shall be performed annually. Any biennial audit shall cover both years within the biennial period.

(a) A State or local government that is required by constitution or statute, in effect on January 1, 1987, to undergo its audits less frequently than annually, is permitted to undergo its audits pursuant to this part biennially. This requirement must still be

in effect for the biennial period under audit.

(b) Any non-profit organization that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, is permitted to undergo its audits pursuant to this part biennially.

§ __.225 Sanctions.

No audit costs may be charged to Federal awards when audits required by this part have not been made or have been made but not in accordance with this part. In cases of continued inability or unwillingness to have an audit conducted in accordance with this part, Federal agencies and pass-through entities shall take appropriate action using sanctions such as:

- (a) Withholding a percentage of Federal awards until the audit is completed satisfactorily;
- (b) Withholding or disallowing overhead costs;
- (c) Suspending Federal awards until the audit is conducted; or
- (d) Terminating the Federal award.

§ __.230 Audit costs.

(a) **Allowable costs.** Unless prohibited by law, the cost of audits made in accordance with the provisions of this part are allowable charges to Federal awards. The charges may be considered a direct cost or an allocated indirect cost, as determined in accordance with the provisions of applicable OMB cost principles circulars, the Federal Acquisition Regulation (FAR) (48 CFR parts 30 and 31), or other applicable cost principles or regulations.

(b) **Unallowable costs.** A non-Federal entity shall not charge the following to a Federal award:

- (1) The cost of any audit under the Single Audit Act Amendments of 1996 (31 U.S.C. 7501 et seq.) not conducted in accordance with this part.
- (2) The cost of auditing a non-Federal entity which has Federal awards expended of less than \$300,000 per year and is thereby exempted under § __.200(d) from having an audit conducted under this part. However, this does not prohibit a pass-through entity from charging Federal awards for the cost of limited scope audits to monitor its subrecipients in accordance with § __.400(d)(3), provided the subrecipient does not have a single audit. For purposes of this part, limited scope audits only include agreed-upon procedures engagements conducted in accordance with either the AICPA's generally accepted auditing standards or attestation standards, that are paid for and arranged by a pass-through entity and address only one or more of the following types of compliance requirements: activities allowed or unallowed; allowable costs/cost principles; eligibility; matching, level of effort, earmarking; and, reporting.

§ __.235 Program-specific audits.

(a) **Program-specific audit guide available.** In many cases, a program-specific audit guide will be available to provide specific guidance to the auditor with respect to internal control, compliance requirements, suggested audit procedures, and audit reporting requirements. The auditor should contact the Office of Inspector General of the Federal agency to determine whether such a guide is available. When a current program-specific audit guide is available, the auditor shall follow GAGAS and the guide when performing a program-specific audit.

(b) **Program-specific audit guide not available.** (1) When a program-specific audit guide is not available, the auditee and auditor shall have basically the same responsibilities for the Federal program as they would have for an audit of a major program in a single audit.

(2) The auditee shall prepare the financial statement(s) for the Federal program that includes, at a minimum, a schedule of expenditures of Federal awards for the program and notes that describe the significant accounting policies used in preparing the schedule, a summary schedule of prior audit findings consistent with the requirements of § __.315(b), and a corrective action plan consistent with the requirements of § __.315(c).

(3) The auditor shall:

- (i) Perform an audit of the financial statement(s) for the Federal program in accordance with GAGAS;

(ii) Obtain an understanding of internal control and perform tests of internal control over the Federal program consistent with the requirements of § ___.500(c) for a major program;

(iii) Perform procedures to determine whether the auditee has complied with laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on the Federal program consistent with the requirements of § ___.500(d) for a major program; and

(iv) Follow up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee, and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding in accordance with the requirements of § ___.500(e).

(4) The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) shall state that the audit was conducted in accordance with this part and include the following:

(i) An opinion (or disclaimer of opinion) as to whether the financial statement(s) of the Federal program is presented fairly in all material respects in conformity with the stated accounting policies;

(ii) A report on internal control related to the Federal program, which shall describe the scope of testing of internal control and the results of the tests;

(iii) A report on compliance which includes an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the provisions of contracts or grant agreements which could have a direct and material effect on the Federal program; and

(iv) A schedule of findings and questioned costs for the Federal program that includes a summary of the auditor's results relative to the Federal program in a format consistent with § ___.505(d)(1) and findings and questioned costs consistent with the requirements of § ___.505(d)(3).

(c) Report submission for program-specific audits.

(1) The audit shall be completed and the reporting required by paragraph (c)(2) or (c)(3) of this section submitted within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a longer period is agreed to in advance by the Federal agency that provided the funding or a different period is specified in a program-specific audit guide. (However, for fiscal years beginning on or before June 30, 1998, the audit shall be completed and the required reporting shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or 13 months after the end of the audit period, unless a different period is specified in a program-specific audit guide.) Unless restricted by law or regulation, the auditee shall make report copies available for public inspection.

(2) When a program-specific audit guide is available, the auditee shall submit to the Federal clearinghouse designated by OMB the data collection form prepared in accordance with § ___.320(b), as applicable to a program-specific audit, and the reporting required by the program-specific audit guide to be retained as an archival copy. Also, the auditee shall submit to the Federal awarding agency or pass-through entity the reporting required by the program-specific audit guide.

(3) When a program-specific audit guide is not available, the reporting package for a program-specific audit shall consist of the financial statement(s) of the Federal program, a summary schedule of prior audit findings, and a corrective action plan as described in paragraph (b)(2) of this section, and the auditor's report(s) described in paragraph (b)(4) of this section. The data collection form prepared in accordance with § ___.320(b), as applicable to a program-specific audit, and one copy of this reporting package shall be submitted to the Federal clearinghouse designated by OMB to be retained as an archival copy. Also, when the schedule of findings and questioned costs disclosed audit findings or the summary schedule of prior audit findings reported the status of any audit findings, the auditee shall submit one copy of the reporting package to the Federal clearinghouse on behalf of the Federal awarding agency, or directly to the pass-through entity in the case of a subrecipient. Instead of submitting the reporting package to the pass-through entity, when a subrecipient is not required to submit a reporting package to the pass-through entity, the subrecipient shall provide written notification to the pass-through entity, consistent with the requirements of § ___.320(e)(2). A subrecipient may submit a copy of the reporting package to the pass-through entity to comply with this notification requirement.

(d) Other sections of this part may apply. Program-specific audits are subject to § ___.100 through § ___.215(b), § ___.220 through § ___.230, § ___.300 through § ___.305, § ___.315, § ___.320(f) through § ___.320(j), § ___.400 through § ___.405, § ___.510 through § ___.515, and other referenced provisions of this part unless contrary to the provisions of this section, a program-specific audit guide, or program laws and regulations.

Subpart C—Auditees**§ __.300 Auditee responsibilities.**

The auditee shall:

- (a) Identify, in its accounts, all Federal awards received and expended and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.
- (b) Maintain internal control over Federal programs that provides reasonable assurance that the auditee is managing Federal awards in compliance with laws, regulations, and the provisions of contracts or grant agreements that could have a material effect on each of its Federal programs.
- (c) Comply with laws, regulations, and the provisions of contracts or grant agreements related to each of its Federal programs.
- (d) Prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with § __.310.
- (e) Ensure that the audits required by this part are properly performed and submitted when due. When extensions to the report submission due date required by § __.320(a) are granted by the cognizant or oversight agency for audit, promptly notify the Federal clearinghouse designated by OMB and each pass-through entity providing Federal awards of the extension.
- (f) Follow up and take corrective action on audit findings, including preparation of a summary schedule of prior audit findings and a corrective action plan in accordance with § __.315(b) and § __.315(c), respectively.

§ __.305 Auditor selection.

(a) **Auditor procurement.** In procuring audit services, auditees shall follow the procurement standards prescribed by the Grants Management Common Rule (hereinafter referred to as the "A-102 Common Rule") published March 11, 1988 and amended April 19, 1995 [insert appropriate CFR citation], Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations," or the FAR (48 CFR part 42), as applicable (OMB Circulars are available from the Office of Administration, Publications Office, room 2200, New Executive Office Building, Washington, DC 20503). Whenever possible, auditees shall make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, in procuring audit services as stated in the A-102 Common Rule, OMB Circular A-110, or the FAR (48 CFR part 42), as applicable. In requesting proposals for audit services, the objectives and scope of the audit should be made clear. Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of external quality control reviews, and price.

(b) **Restriction on auditor preparing indirect cost proposals.** An auditor who prepares the indirect cost proposal or cost allocation plan may not also be selected to perform the audit required by this part when the indirect costs recovered by the auditee during the prior year exceeded \$1 million. This restriction applies to the base year used in the preparation of the indirect cost proposal or cost allocation plan and any subsequent years in which the resulting indirect cost agreement or cost allocation plan is used to recover costs. To minimize any disruption in existing contracts for audit services, this paragraph applies to audits of fiscal years beginning after June 30, 1998.

(c) **Use of Federal auditors.** Federal auditors may perform all or part of the work required under this part if they comply fully with the requirements of this part.

§ __.310 Financial statements.

(a) **Financial statements.** The auditee shall prepare financial statements that reflect its financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited. The financial statements shall be for the same organizational unit and fiscal year that is chosen to meet the requirements of this part. However, organization-wide financial statements may also include departments, agencies, and other organizational units that have separate audits in accordance with § __.500(a) and prepare separate financial statements.

(b) **Schedule of expenditures of Federal awards.** The auditee shall also prepare a schedule of expenditures of Federal awards for the period covered by the auditee's financial statements. While not required, the auditee may choose to provide information

requested by Federal awarding agencies and pass-through entities to make the schedule easier to use. For example, when a Federal program has multiple award years, the auditee may list the amount of Federal awards expended for each award year separately. At a minimum, the schedule shall:

- (1) List individual Federal programs by Federal agency. For Federal programs included in a cluster of programs, list individual Federal programs within a cluster of programs. For R&D, total Federal awards expended shall be shown either by individual award or by Federal agency and major subdivision within the Federal agency. For example, the National Institutes of Health is a major subdivision in the Department of Health and Human Services.
- (2) For Federal awards received as a subrecipient, the name of the pass-through entity and identifying number assigned by the pass-through entity shall be included.
- (3) Provide total Federal awards expended for each individual Federal program and the CFDA number or other identifying number when the CFDA information is not available.
- (4) Include notes that describe the significant accounting policies used in preparing the schedule.
- (5) To the extent practical, pass-through entities should identify in the schedule the total amount provided to subrecipients from each Federal program.
- (6) Include, in either the schedule or a note to the schedule, the value of the Federal awards expended in the form of non-cash assistance, the amount of insurance in effect during the year, and loans or loan guarantees outstanding at year end. While not required, it is preferable to present this information in the schedule.

§ 315 Audit findings follow-up.

- (a) **General.** The auditee is responsible for follow-up and corrective action on all audit findings. As part of this responsibility, the auditee shall prepare a summary schedule of prior audit findings. The auditee shall also prepare a corrective action plan for current year audit findings. The summary schedule of prior audit findings and the corrective action plan shall include the reference numbers the auditor assigns to audit findings under § 510(c). Since the summary schedule may include audit findings from multiple years, it shall include the fiscal year in which the finding initially occurred.
- (b) **Summary schedule of prior audit findings.** The summary schedule of prior audit findings shall report the status of all audit findings included in the prior audit's schedule of findings and questioned costs relative to Federal awards. The summary schedule shall also include audit findings reported in the prior audit's summary schedule of prior audit findings except audit findings listed as corrected in accordance with paragraph (b)(1) of this section, or no longer valid or not warranting further action in accordance with paragraph (b)(4) of this section.
 - (1) When audit findings were fully corrected, the summary schedule need only list the audit findings and state that corrective action was taken.
 - (2) When audit findings were not corrected or were only partially corrected, the summary schedule shall describe the planned corrective action as well as any partial corrective action taken.
 - (3) When corrective action taken is significantly different from corrective action previously reported in a corrective action plan or in the Federal agency's or pass-through entity's management decision, the summary schedule shall provide an explanation.
 - (4) When the auditee believes the audit findings are no longer valid or do not warrant further action, the reasons for this position shall be described in the summary schedule. A valid reason for considering an audit finding as not warranting further action is that all of the following have occurred:
 - (i) Two years have passed since the audit report in which the finding occurred was submitted to the Federal clearinghouse;
 - (ii) The Federal agency or pass-through entity is not currently following up with the auditee on the audit finding; and
 - (iii) A management decision was not issued.
- (c) **Corrective action plan.** At the completion of the audit, the auditee shall prepare a corrective action plan to address each audit finding included in the current year auditor's reports. The corrective action plan shall provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date. If the auditee

does not agree with the audit findings or believes corrective action is not required, then the corrective action plan shall include an explanation and specific reasons.

§ __.320 Report submission.

(a) **General.** The audit shall be completed and the data collection form described in paragraph (b) of this section and reporting package described in paragraph (c) of this section shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a longer period is agreed to in advance by the cognizant or oversight agency for audit. (However, for fiscal years beginning on or before June 30, 1998, the audit shall be completed and the data collection form and reporting package shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or 13 months after the end of the audit period.) Unless restricted by law or regulation, the auditee shall make copies available for public inspection.

(b) **Data Collection.** (1) The auditee shall submit a data collection form which states whether the audit was completed in accordance with this part and provides information about the auditee, its Federal programs, and the results of the audit. The form shall be approved by OMB, available from the Federal clearinghouse designated by OMB, and include data elements similar to those presented in this paragraph. A senior level representative of the auditee (e.g., State controller, director of finance, chief executive officer, or chief financial officer) shall sign a statement to be included as part of the form certifying that: the auditee complied with the requirements of this part, the form was prepared in accordance with this part (and the instructions accompanying the form), and the information included in the form, in its entirety, are accurate and complete.

(2) The data collection form shall include the following data elements:

(i) The type of report the auditor issued on the financial statements of the auditee (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion).

(ii) Where applicable, a statement that reportable conditions in internal control were disclosed by the audit of the financial statements and whether any such conditions were material weaknesses.

(iii) A statement as to whether the audit disclosed any noncompliance which is material to the financial statements of the auditee.

(iv) Where applicable, a statement that reportable conditions in internal control over major programs were disclosed by the audit and whether any such conditions were material weaknesses.

(v) The type of report the auditor issued on compliance for major programs (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion).

(vi) A list of the Federal awarding agencies which will receive a copy of the reporting package pursuant to § __.320(d)(2) of OMB Circular A-133.

(vii) A yes or no statement as to whether the auditee qualified as a low-risk auditee under § __.530 of OMB Circular A-133.

(viii) The dollar threshold used to distinguish between Type A and Type B programs as defined in § __.520(b) of OMB Circular A-133.

(ix) The Catalog of Federal Domestic Assistance (CFDA) number for each Federal program, as applicable.

(x) The name of each Federal program and identification of each major program. Individual programs within a cluster of programs should be listed in the same level of detail as they are listed in the schedule of expenditures of Federal awards.

(xi) The amount of expenditures in the schedule of expenditures of Federal awards associated with each Federal program.

(xii) For each Federal program, a yes or no statement as to whether there are audit findings in each of the following types of compliance requirements and the total amount of any questioned costs:

(A) Activities allowed or unallowed.

(B) Allowable costs/cost principles.

(C) Cash management.

(D) Davis-Bacon Act.

(E) Eligibility.

(F) Equipment and real property management.

(G) Matching, level of effort, earmarking.

(H) Period of availability of Federal funds.

(I) Procurement and suspension and debarment.

(J) Program income.

(K) Real property acquisition and relocation assistance.

(L) Reporting.

(M) Subrecipient monitoring.

(N) Special tests and provisions.

(xiii) Auditee Name, Employer Identification Number(s), Name and Title of Certifying Official, Telephone Number, Signature, and Date.

(xiv) Auditor Name, Name and Title of Contact Person, Auditor Address, Auditor Telephone Number, Signature, and Date.

(xv) Whether the auditee has either a cognizant or oversight agency for audit.

(xvi) The name of the cognizant or oversight agency for audit determined in accordance with § __.400(a) and § __.400(b), respectively.

(3) Using the information included in the reporting package described in paragraph (c) of this section, the auditor shall complete the applicable sections of the form. The auditor shall sign a statement to be included as part of the data collection form that indicates, at a minimum, the source of the information included in the form, the auditor's responsibility for the information, that the form is not a substitute for the reporting package described in paragraph (c) of this section, and that the content of the form is limited to the data elements prescribed by OMB.

(c) Reporting package. The reporting package shall include the:

(1) Financial statements and schedule of expenditures of Federal awards discussed in § __.310(a) and § __.310(b), respectively;

(2) Summary schedule of prior audit findings discussed in § __.315(b);

(3) Auditor's report(s) discussed in § __.505; and

(4) Corrective action plan discussed in § __.315(c).

(d) Submission to clearinghouse. All auditees shall submit to the Federal clearinghouse designated by OMB the data collection form described in paragraph (b) of this section and one copy of the reporting package described in paragraph (c) of this section for:

(1) The Federal clearinghouse to retain as an archival copy; and

(2) Each Federal awarding agency when the schedule of findings and questioned costs disclosed audit findings relating to Federal awards that the Federal awarding agency provided directly or the summary schedule of prior audit findings reported the status of any audit findings relating to Federal awards that the Federal awarding agency provided directly.

(e) **Additional submission by subrecipients.** (1) In addition to the requirements discussed in paragraph (d) of this section, auditees that are also subrecipients shall submit to each pass-through entity one copy of the reporting package described in paragraph (c) of this section for each pass-through entity when the schedule of findings and questioned costs disclosed audit findings relating to Federal awards that the pass-through entity provided or the summary schedule of prior audit findings reported the status of any audit findings relating to Federal awards that the pass-through entity provided.

(2) Instead of submitting the reporting package to a pass-through entity, when a subrecipient is not required to submit a reporting package to a pass-through entity pursuant to paragraph (e)(1) of this section, the subrecipient shall provide written notification to the pass-through entity that: an audit of the subrecipient was conducted in accordance with this part (including the period covered by the audit and the name, amount, and CFDA number of the Federal award(s) provided by the pass-through entity); the schedule of findings and questioned costs disclosed no audit findings relating to the Federal award(s) that the pass-through entity provided; and, the summary schedule of prior audit findings did not report on the status of any audit findings relating to the Federal award(s) that the pass-through entity provided. A subrecipient may submit a copy of the reporting package described in paragraph (c) of this section to a pass-through entity to comply with this notification requirement.

(f) **Requests for report copies.** In response to requests by a Federal agency or pass-through entity, auditees shall submit the appropriate copies of the reporting package described in paragraph (c) of this section and, if requested, a copy of any management letters issued by the auditor.

(g) **Report retention requirements.** Auditees shall keep one copy of the data collection form described in paragraph (b) of this section and one copy of the reporting package described in paragraph (c) of this section on file for three years from the date of submission to the Federal clearinghouse designated by OMB. Pass-through entities shall keep subrecipients' submissions on file for three years from date of receipt.

(h) **Clearinghouse responsibilities.** The Federal clearinghouse designated by OMB shall distribute the reporting packages received in accordance with paragraph (d)(2) of this section and § __.235(c)(3) to applicable Federal awarding agencies, maintain a data base of completed audits, provide appropriate information to Federal agencies, and follow up with known auditees which have not submitted the required data collection forms and reporting packages.

(i) **Clearinghouse address.** The address of the Federal clearinghouse currently designated by OMB is Federal Audit Clearinghouse, Bureau of the Census, 1201 E. 10th Street, Jeffersonville, IN 47132.

(j) **Electronic filing.** Nothing in this part shall preclude electronic submissions to the Federal clearinghouse in such manner as may be approved by OMB. With OMB approval, the Federal clearinghouse may pilot test methods of electronic submissions.

Subpart D—Federal Agencies and Pass-Through Entities

§ __.400 Responsibilities.

(a) **Cognizant agency for audit responsibilities.** Recipients expending more than \$25 million a year in Federal awards shall have a cognizant agency for audit. The designated cognizant agency for audit shall be the Federal awarding agency that provides the predominant amount of direct funding to a recipient unless OMB makes a specific cognizant agency for audit assignment. To provide for continuity of cognizance, the determination of the predominant amount of direct funding shall be based upon direct Federal awards expended in the recipient's fiscal years ending in 1995, 2000, 2005, and every fifth year thereafter. For example, audit cognizance for periods ending in 1997 through 2000 will be determined based on Federal awards expended in 1995. (However, for States and local governments that expend more than \$25 million a year in Federal awards and have previously assigned cognizant agencies for audit, the requirements of this paragraph are not effective until fiscal years beginning after June 30, 2000.) Notwithstanding the manner in which audit cognizance is determined, a Federal awarding agency with cognizance for an auditee may reassign cognizance to another Federal awarding agency which provides substantial direct funding and agrees to be the cognizant agency for audit. Within 30 days after any reassignment, both the old and the new cognizant agency for audit shall notify the auditee, and, if known, the auditor of the reassignment. The cognizant agency for audit shall:

(1) Provide technical audit advice and liaison to auditees and auditors.

(2) Consider auditee requests for extensions to the report submission due date required by § __.320(a). The cognizant agency

for audit may grant extensions for good cause.

(3) Obtain or conduct quality control reviews of selected audits made by non-Federal auditors, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any direct reporting by the auditee or its auditor of irregularities or illegal acts, as required by GAGAS or laws and regulations.

(5) Advise the auditor and, where appropriate, the auditee of any deficiencies found in the audits when the deficiencies require corrective action by the auditor. When advised of deficiencies, the auditee shall work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency for audit shall notify the auditor, the auditee, and applicable Federal awarding agencies and pass-through entities of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance by auditors shall be referred to appropriate State licensing agencies and professional bodies for disciplinary action.

(6) Coordinate, to the extent practical, audits or reviews made by or for Federal agencies that are in addition to the audits made pursuant to this part, so that the additional audits or reviews build upon audits performed in accordance with this part.

(7) Coordinate a management decision for audit findings that affect the Federal programs of more than one agency.

(8) Coordinate the audit work and reporting responsibilities among auditors to achieve the most cost-effective audit.

(9) For biennial audits permitted under § ___.220, consider auditee requests to qualify as a low-risk auditee under § ___.530(a).

(b) **Oversight agency for audit responsibilities.** An auditee which does not have a designated cognizant agency for audit will be under the general oversight of the Federal agency determined in accordance with § ___.105. The oversight agency for audit:

(1) Shall provide technical advice to auditees and auditors as requested.

(2) May assume all or some of the responsibilities normally performed by a cognizant agency for audit.

(c) **Federal awarding agency responsibilities.** The Federal awarding agency shall perform the following for the Federal awards it makes:

(1) Identify Federal awards made by informing each recipient of the CFDA title and number, award name and number, award year, and if the award is for R&D. When some of this information is not available, the Federal agency shall provide information necessary to clearly describe the Federal award.

(2) Advise recipients of requirements imposed on them by Federal laws, regulations, and the provisions of contracts or grant agreements.

(3) Ensure that audits are completed and reports are received in a timely manner and in accordance with the requirements of this part.

(4) Provide technical advice and counsel to auditees and auditors as requested.

(5) Issue a management decision on audit findings within six months after receipt of the audit report and ensure that the recipient takes appropriate and timely corrective action.

(6) Assign a person responsible for providing annual updates of the compliance supplement to OMB.

(d) **Pass-through entity responsibilities.** A pass-through entity shall perform the following for the Federal awards it makes:

(1) Identify Federal awards made by informing each subrecipient of CFDA title and number, award name and number, award year, if the award is R&D, and name of Federal agency. When some of this information is not available, the pass-through entity shall provide the best information available to describe the Federal award.

(2) Advise subrecipients of requirements imposed on them by Federal laws, regulations, and the provisions of contracts or grant agreements as well as any supplemental requirements imposed by the pass-through entity.

- (3) Monitor the activities of subrecipients as necessary to ensure that Federal awards are used for authorized purposes in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.
- (4) Ensure that subrecipients expending \$300,000 or more in Federal awards during the subrecipient's fiscal year have met the audit requirements of this part for that fiscal year.
- (5) Issue a management decision on audit findings within six months after receipt of the subrecipient's audit report and ensure that the subrecipient takes appropriate and timely corrective action.
- (6) Consider whether subrecipient audits necessitate adjustment of the pass-through entity's own records.
- (7) Require each subrecipient to permit the pass-through entity and auditors to have access to the records and financial statements as necessary for the pass-through entity to comply with this part.

§ __.405 Management decision.

(a) **General.** The management decision shall clearly state whether or not the audit finding is sustained, the reasons for the decision, and the expected auditee action to repay disallowed costs, make financial adjustments, or take other action. If the auditee has not completed corrective action, a timetable for follow-up should be given. Prior to issuing the management decision, the Federal agency or pass-through entity may request

additional information or documentation from the auditee, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs. The management decision should describe any appeal process available to the auditee.

(b) **Federal agency.** As provided in § __.400(a)(7), the cognizant agency for audit shall be responsible for coordinating a management decision for audit findings that affect the programs of more than one Federal agency. As provided in § __.400(c)(5), a Federal awarding agency is responsible for issuing a management decision for findings that relate to Federal awards it makes to recipients. Alternate arrangements may be made on a case-by-case basis by agreement among the Federal agencies concerned.

(c) **Pass-through entity.** As provided in § __.400(d)(5), the pass-through entity shall be responsible for making the management decision for audit findings that relate to Federal awards it makes to subrecipients.

(d) **Time requirements.** The entity responsible for making the management decision shall do so within six months of receipt of the audit report. Corrective action should be initiated within six months after receipt of the audit report and proceed as rapidly as possible.

(e) **Reference numbers.** Management decisions shall include the reference numbers the auditor assigned to each audit finding in accordance with § __.510(c).

Subpart E--Auditors

§ __.500 Scope of audit.

(a) **General.** The audit shall be conducted in accordance with GAGAS. The audit shall cover the entire operations of the auditee; or, at the option of the auditee, such audit shall include a series of audits that cover departments, agencies, and other organizational units which expended or otherwise administered Federal awards during such fiscal year, provided that each such audit shall encompass the financial statements and schedule of expenditures of Federal awards for each such department, agency, and other organizational unit, which shall be considered to be a non-Federal entity. The financial statements and schedule of expenditures of Federal awards shall be for the same fiscal year.

(b) **Financial statements.** The auditor shall determine whether the financial statements of the auditee are presented fairly in all material respects in conformity with generally accepted accounting principles. The auditor shall also determine whether the schedule of expenditures of Federal awards is presented fairly in all material respects in relation to the auditee's financial statements taken as a whole.

(c) **Internal control.** (1) In addition to the requirements of GAGAS, the auditor shall perform procedures to obtain an understanding of internal control over Federal programs sufficient to plan the audit to support a low assessed level of control

risk for major programs.

(2) Except as provided in paragraph (c)(3) of this section, the auditor shall:

(i) Plan the testing of internal control over major programs to support a low assessed level of control risk for the assertions relevant to the compliance requirements for each major program; and

(ii) Perform testing of internal control as planned in paragraph (c)(2)(i) of this section.

(3) When internal control over some or all of the compliance requirements for a major program are likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing described in paragraph (c)(2) of this section are not required for those compliance requirements. However, the auditor shall report a reportable condition (including whether any such condition is a material weakness) in accordance with § ___,510, assess the related control risk at the maximum, and consider whether additional compliance tests are required because of ineffective internal control.

(d) **Compliance.** (1) In addition to the requirements of GAGAS, the auditor shall determine whether the auditee has complied with laws, regulations, and the provisions of contracts or grant agreements that may have a direct and material effect on each of its major programs.

(2) The principal compliance requirements applicable to most Federal programs and the compliance requirements of the largest Federal programs are included in the compliance supplement.

(3) For the compliance requirements related to Federal programs contained in the compliance supplement, an audit of these compliance requirements will meet the requirements of this part. Where there have been changes to the compliance requirements and the changes are not reflected in the compliance supplement, the auditor shall determine the current compliance requirements and modify the audit procedures accordingly. For those Federal programs not covered in the compliance supplement, the auditor should use the types of compliance requirements contained in the compliance supplement as guidance for identifying the types of compliance requirements to test, and determine the requirements governing the Federal program by reviewing the provisions of contracts and grant agreements and the laws and regulations referred to in such contracts and grant agreements.

(4) The compliance testing shall include tests of transactions and such other auditing procedures necessary to provide the auditor sufficient evidence to support an opinion on compliance.

(e) **Audit follow-up.** The auditor shall follow-up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with § ___,315(b), and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding. The auditor shall perform audit follow-up procedures regardless of whether a prior audit finding relates to a major program in the current year.

(f) **Data Collection Form.** As required in § ___,320(b)(3), the auditor shall complete and sign specified sections of the data collection form.

§ ___,505 Audit reporting.

The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) shall state that the audit was conducted in accordance with this part and include the following:

(a) An opinion (or disclaimer of opinion) as to whether the financial statements are presented fairly in all material respects in conformity with generally accepted accounting principles and an opinion (or disclaimer of opinion) as to whether the schedule of expenditures of Federal awards is presented fairly in all material respects in relation to the financial statements taken as a whole.

(b) A report on internal control related to the financial statements and major programs. This report shall describe the scope of testing of internal control and the results of the tests, and, where applicable, refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(c) A report on compliance with laws, regulations, and the provisions of contracts or grant agreements, noncompliance with which could have a material effect on the financial statements. This report shall also include an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the provisions of contracts or grant agreements which

could have a direct and material effect on each major program, and, where applicable, refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(d) A schedule of findings and questioned costs which shall include the following three components:

(1) A summary of the auditor's results which shall include:

(i) The type of report the auditor issued on the financial statements of the auditee (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(ii) Where applicable, a statement that reportable conditions in internal control were disclosed by the audit of the financial statements and whether any such conditions were material weaknesses;

(iii) A statement as to whether the audit disclosed any noncompliance which is material to the financial statements of the auditee;

(iv) Where applicable, a statement that reportable conditions in internal control over major programs were disclosed by the audit and whether any such conditions were material weaknesses;

(v) The type of report the auditor issued on compliance for major programs (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(vi) A statement as to whether the audit disclosed any audit findings which the auditor is required to report under § __.510(a);

(vii) An identification of major programs;

(viii) The dollar threshold used to distinguish between Type A and Type B programs, as described in § __.520(b); and

(ix) A statement as to whether the auditee qualified as a low-risk auditee under § __.530.

(2) Findings relating to the financial statements which are required to be reported in accordance with GAGAS.

(3) Findings and questioned costs for Federal awards which shall include audit findings as defined in § __.510(a).

(i) Audit findings (e.g., internal control findings, compliance findings, questioned costs, or fraud) which relate to the same issue should be presented as a single audit finding. Where practical, audit findings should be organized by Federal agency or pass-through entity.

(ii) Audit findings which relate to both the financial statements and Federal awards, as reported under paragraphs (d)(2) and (d)(3) of this section, respectively, should be reported in both sections of the schedule. However, the reporting in one section of the schedule may be in summary form with a reference to a detailed reporting in the other section of the schedule.

§ __.510 Audit findings.

(a) **Audit findings reported.** The auditor shall report the following as audit findings in a schedule of findings and questioned costs:

(1) Reportable conditions in internal control over major programs. The auditor's determination of whether a deficiency in internal control is a reportable condition for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program or an audit objective identified in the compliance supplement. The auditor shall identify reportable conditions which are individually or cumulatively material weaknesses.

(2) Material noncompliance with the provisions of laws, regulations, contracts, or grant agreements related to a major program. The auditor's determination of whether a noncompliance with the provisions of laws, regulations, contracts, or grant agreements is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program or an audit objective identified in the compliance supplement.

(3) Known questioned costs which are greater than \$10,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on

compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor shall also report known questioned costs when likely questioned costs are greater than \$10,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor shall include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

(4) Known questioned costs which are greater than \$10,000 for a Federal program which is not audited as a major program. Except for audit follow-up, the auditor is not required under this part to perform audit procedures for such a Federal program; therefore, the auditor will normally not find questioned costs for a program which is not audited as a major program. However, if the auditor does become aware of questioned costs for a Federal program which is not audited as a major program (e.g., as part of audit follow-up or other audit procedures) and the known questioned costs are greater than \$10,000, then the auditor shall report this as an audit finding.

(5) The circumstances concerning why the auditor's report on compliance for major programs is other than an unqualified opinion, unless such circumstances are otherwise reported as audit findings in the schedule of findings and questioned costs for Federal awards.

(6) Known fraud affecting a Federal award, unless such fraud is otherwise reported as an audit finding in the schedule of findings and questioned costs for Federal awards. This paragraph does not require the auditor to make an additional reporting when the auditor confirms that the fraud was reported outside of the auditor's reports under the direct reporting requirements of GAGAS.

(7) Instances where the results of audit follow-up procedures disclosed that the summary schedule of prior audit findings prepared by the auditee in accordance with § __.315(b) materially misrepresents the status of any prior audit finding.

(b) **Audit finding detail.** Audit findings shall be presented in sufficient detail for the auditee to prepare a corrective action plan and take corrective action and for Federal agencies and pass-through entities to arrive at a management decision. The following specific information shall be included, as applicable, in audit findings:

(1) Federal program and specific Federal award identification including the CFDA title and number, Federal award number and year, name of Federal agency, and name of the applicable pass-through entity. When information, such as the CFDA title and number or Federal award number, is not available, the auditor shall provide the best information available to describe the Federal award.

(2) The criteria or specific requirement upon which the audit finding is based, including statutory, regulatory, or other citation.

(3) The condition found, including facts that support the deficiency identified in the audit finding.

(4) Identification of questioned costs and how they were computed.

(5) Information to provide proper perspective for judging the prevalence and consequences of the audit findings, such as whether the audit findings represent an isolated instance or a systemic problem. Where appropriate, instances identified shall be related to the universe and the number of cases examined and be quantified in terms of dollar value.

(6) The possible asserted effect to provide sufficient information to the auditee and Federal agency, or pass-through entity in the case of a subrecipient, to permit them to determine the cause and effect to facilitate prompt and proper corrective action.

(7) Recommendations to prevent future occurrences of the deficiency identified in the audit finding.

(8) Views of responsible officials of the auditee when there is disagreement with the audit findings, to the extent practical.

(c) **Reference numbers.** Each audit finding in the schedule of findings and questioned costs shall include a reference number to allow for easy referencing of the audit findings during follow-up.

§ __.515 Audit working papers.

(a) **Retention of working papers.** The auditor shall retain working papers and reports for a minimum of three years after the date of issuance of the auditor's report(s) to the auditee, unless the auditor is notified in writing by the cognizant agency for audit, oversight agency for audit, or pass-through entity to extend the retention period. When the auditor is aware that the Federal awarding agency, pass-through entity, or auditee is contesting an audit finding, the auditor shall contact the parties contesting the audit finding for guidance prior to destruction of the working papers and reports.

(b) Access to working papers. Audit working papers shall be made available upon request to the cognizant or oversight agency for audit or its designee, a Federal agency providing direct or indirect funding, or GAO at the completion of the audit, as part of a quality review, to resolve audit findings, or to carry out oversight responsibilities consistent with the purposes of this part. Access to working papers includes the right of Federal agencies to obtain copies of working papers, as is reasonable and necessary.

§ 520 Major program determination.

(a) General. The auditor shall use a risk-based approach to determine which Federal programs are major programs. This risk-based approach shall include consideration of: Current and prior audit experience, oversight by Federal agencies and pass-through entities, and the inherent risk of the Federal program. The process in paragraphs (b) through (i) of this section shall be followed.

(b) Step 1. (1) The auditor shall identify the larger Federal programs, which shall be labeled Type A programs. Type A programs are defined as Federal programs with Federal awards expended during the audit period exceeding the larger of:

(i) \$300,000 or three percent (.03) of total Federal awards expended in the case of an auditee for which total Federal awards expended equal or exceed \$300,000 but are less than or equal to \$100 million.

(ii) \$3 million or three-tenths of one percent (.003) of total Federal awards expended in the case of an auditee for which total Federal awards expended exceed \$100 million but are less than or equal to \$10 billion.

(iii) \$30 million or 15 hundredths of one percent (.0015) of total Federal awards expended in the case of an auditee for which total Federal awards expended exceed \$10 billion.

(2) Federal programs not labeled Type A under paragraph (b)(1) of this section shall be labeled Type B programs.

(3) The inclusion of large loan and loan guarantees (loans) should not result in the exclusion of other programs as Type A programs. When a Federal program providing loans significantly affects the number or size of Type A programs, the auditor shall consider this Federal program as a Type A program and exclude its values in determining other Type A programs.

(4) For biennial audits permitted under § 220, the determination of Type A and Type B programs shall be based upon the Federal awards expended during the two-year period.

(c) Step 2. (1) The auditor shall identify Type A programs which are low-risk. For a Type A program to be considered low-risk, it shall have been audited as a major program in at least one of the two most recent audit periods (in the most recent audit period in the case of a biennial audit), and, in the most recent audit period, it shall have had no audit findings under § 510(a). However, the auditor may use judgment and consider that audit findings from questioned costs under § 510(a)(3) and § 510(a)(4), fraud under § 510(a)(6), and audit follow-up for the summary schedule of prior audit findings under § 510(a)(7) do not preclude the Type A program from being low-risk. The auditor shall consider: the criteria in § 525(c), § 525(d)(1), § 525(d)(2), and § 525(d)(3); the results of audit follow-up; whether any changes in personnel or systems affecting a Type A program have significantly increased risk; and apply professional judgment in determining whether a Type A program is low-risk.

(2) Notwithstanding paragraph (c)(1) of this section, OMB may approve a Federal awarding agency's request that a Type A program at certain recipients may not be considered low-risk. For example, it may be necessary for a large Type A program to be audited as major each year at particular recipients to allow the Federal agency to comply with the Government Management Reform Act of 1994 (31 U.S.C. 3515). The Federal agency shall notify the recipient and, if known, the auditor at least 180 days prior to the end of the fiscal year to be audited of OMB's approval.

(d) Step 3. (1) The auditor shall identify Type B programs which are high-risk using professional judgment and the criteria in § 525. However, should the auditor select Option 2 under Step 4 (paragraph (e)(2)(i)(B) of this section), the auditor is not required to identify more high-risk Type B programs than the number of low-risk Type A programs. Except for known reportable conditions in internal control or compliance problems as discussed in § 525(b)(1), § 525(b)(2), and § 525(c)(1), a single criteria in § 525 would seldom cause a Type B program to be considered high-risk.

(2) The auditor is not expected to perform risk assessments on relatively small Federal programs. Therefore, the auditor is only required to perform risk assessments on Type B programs that exceed the larger of:

(i) \$100,000 or three-tenths of one percent (.003) of total Federal awards expended when the auditee has less than or equal to \$100 million in total Federal awards expended.

(ii) \$300,000 or three-hundredths of one percent (.0003) of total Federal awards expended when the auditee has more than \$100 million in total Federal awards expended.

(e) Step 4. At a minimum, the auditor shall audit all of the following as major programs:

(1) All Type A programs, except the auditor may exclude any Type A programs identified as low-risk under Step 2 (paragraph (c)(1) of this section).

(2) (i) High-risk Type B programs as identified under either of the following two options:

(A) Option 1. At least one half of the Type B programs identified as high-risk under Step 3 (paragraph (d) of this section), except this paragraph (e)(2)(i)(A) does not require the auditor to audit more high-risk Type B programs than the number of low-risk Type A programs identified as low-risk under Step 2.

(B) Option 2. One high-risk Type B program for each Type A program identified as low-risk under Step 2.

(ii) When identifying which high-risk Type B programs to audit as major under either Option 1 or 2 in paragraph (e)(2)(i)(A) or (B), the auditor is encouraged to use an approach which provides an opportunity for different high-risk Type B programs to be audited as major over a period of time.

(3) Such additional programs as may be necessary to comply with the percentage of coverage rule discussed in paragraph (f) of this section. This paragraph (e)(3) may require the auditor to audit more programs as major than the number of Type A programs.

(f) **Percentage of coverage rule.** The auditor shall audit as major programs Federal programs with Federal awards expended that, in the aggregate, encompass at least 50 percent of total Federal awards expended. If the auditee meets the criteria in § __.530 for a low-risk auditee, the auditor need only audit as major programs Federal programs with Federal awards expended that, in the aggregate, encompass at least 25 percent of total Federal awards expended.

(g) **Documentation of risk.** The auditor shall document in the working papers the risk analysis process used in determining major programs.

(h) **Auditor's judgment.** When the major program determination was performed and documented in accordance with this part, the auditor's judgment in applying the risk-based approach to determine major programs shall be presumed correct. Challenges by Federal agencies and pass-through entities shall only be for clearly improper use of the guidance in this part. However, Federal agencies and pass-through entities may provide auditors guidance about the risk of a particular Federal program and the auditor shall consider this guidance in determining major programs in audits not yet completed.

(i) **Deviation from use of risk criteria.** For first-year audits, the auditor may elect to determine major programs as all Type A programs plus any Type B programs as necessary to meet the percentage of coverage rule discussed in paragraph (f) of this section. Under this option, the auditor would not be required to perform the procedures discussed in paragraphs (c), (d), and (e) of this section.

(1) A first-year audit is the first year the entity is audited under this part or the first year of a change of auditors.

(2) To ensure that a frequent change of auditors would not preclude audit of high-risk Type B programs, this election for first-year audits may not be used by an auditee more than once in every three years.

§ __.525 Criteria for Federal program risk.

(a) **General.** The auditor's determination should be based on an overall evaluation of the risk of noncompliance occurring which could be material to the Federal program. The auditor shall use auditor judgment and consider criteria, such as described in paragraphs (b), (c), and (d) of this section, to identify risk in Federal programs. Also, as part of the risk analysis, the auditor may wish to discuss a particular Federal program with auditee management and the Federal agency or pass-through entity.

(b) **Current and prior audit experience.** (1) Weaknesses in internal control over Federal programs would indicate higher risk. Consideration should be given to the control environment over Federal programs and such factors as the expectation of management's adherence to applicable laws and regulations and the provisions of contracts and grant agreements and the competence and experience of personnel who administer the Federal programs.

(i) A Federal program administered under multiple internal control structures may have higher risk. When assessing risk in a large single audit, the auditor shall consider whether weaknesses are isolated in a single operating unit (e.g., one college campus) or pervasive throughout the entity.

(ii) When significant parts of a Federal program are passed through to subrecipients, a weak system for monitoring subrecipients would indicate higher risk.

(iii) The extent to which computer processing is used to administer Federal programs, as well as the complexity of that processing, should be considered by the auditor in assessing risk. New and recently modified computer systems may also indicate risk.

(2) Prior audit findings would indicate higher risk, particularly when the situations identified in the audit findings could have a significant impact on a Federal program or have not been corrected.

(3) Federal programs not recently audited as major programs may be of higher risk than Federal programs recently audited as major programs without audit findings.

(c) **Oversight exercised by Federal agencies and pass-through entities.** (1) Oversight exercised by Federal agencies or pass-through entities could indicate risk. For example, recent monitoring or other reviews performed by an oversight entity which disclosed no significant problems would indicate lower risk. However, monitoring which disclosed significant problems would indicate higher risk.

(2) Federal agencies, with the concurrence of OMB, may identify Federal programs which are higher risk. OMB plans to provide this identification in the compliance supplement.

(d) **Inherent risk of the Federal program.** (1) The nature of a Federal program may indicate risk. Consideration should be given to the complexity of the program and the extent to which the Federal program contracts for goods and services. For example, Federal programs that disburse funds through third party contracts or have eligibility criteria may be of higher risk. Federal programs primarily involving staff payroll costs may have a high-risk for time and effort reporting, but otherwise be at low-risk.

(2) The phase of a Federal program in its life cycle at the Federal agency may indicate risk. For example, a new Federal program with new or interim regulations may have higher risk than an established program with time-tested regulations. Also, significant changes in Federal programs, laws, regulations, or the provisions of contracts or grant agreements may increase risk.

(3) The phase of a Federal program in its life cycle at the auditee may indicate risk. For example, during the first and last years that an auditee participates in a Federal program, the risk may be higher due to start-up or closeout of program activities and staff.

(4) Type B programs with larger Federal awards expended would be of higher risk than programs with substantially smaller Federal awards expended.

§ 530 Criteria for a low-risk auditee.

An auditee which meets all of the following conditions for each of the preceding two years (or, in the case of biennial audits, preceding two audit periods) shall qualify as a low-risk auditee and be eligible for reduced audit coverage in accordance with § 520:

(a) Single audits were performed on an annual basis in accordance with the provisions of this part. A non-Federal entity that has biennial audits does not qualify as a low-risk auditee, unless agreed to in advance by the cognizant or oversight agency for audit.

(b) The auditor's opinions on the financial statements and the schedule of expenditures of Federal awards were unqualified. However, the cognizant or oversight agency for audit may judge that an opinion qualification does not affect the management of Federal awards and provide a waiver.

(c) There were no deficiencies in internal control which were identified as material weaknesses under the requirements of GAGAS. However, the cognizant or oversight agency for audit may judge that any identified material weaknesses do not affect the management of Federal awards and provide a waiver.

(d) None of the Federal programs had audit findings from any of the following in either of the preceding two years (or, in the case of biennial audits, preceding two audit periods) in which they were classified as Type A programs:

(1) Internal control deficiencies which were identified as material weaknesses;

(2) Noncompliance with the provisions of laws, regulations, contracts, or grant agreements which have a material effect on the Type A program; or (3) Known or likely questioned costs that exceed five percent of the total Federal awards expended for a Type A program during the year.

Appendix A to Part __ - Data Collection Form (Form SF-SAC)

Appendix B to Part __ - Circular A-133 Compliance Supplement

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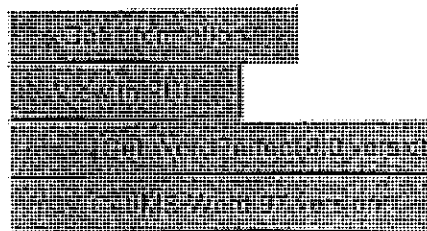
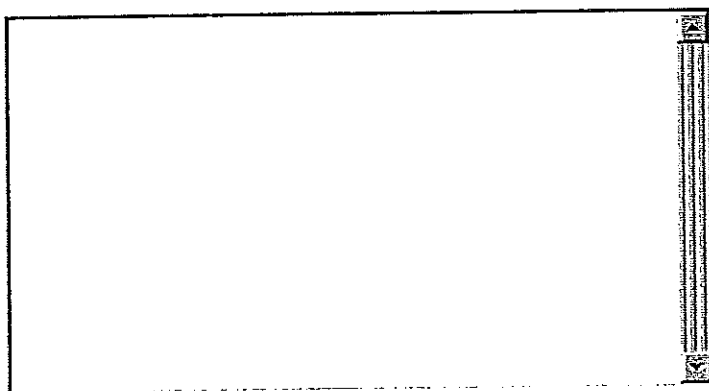
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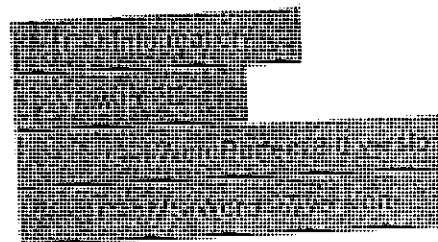
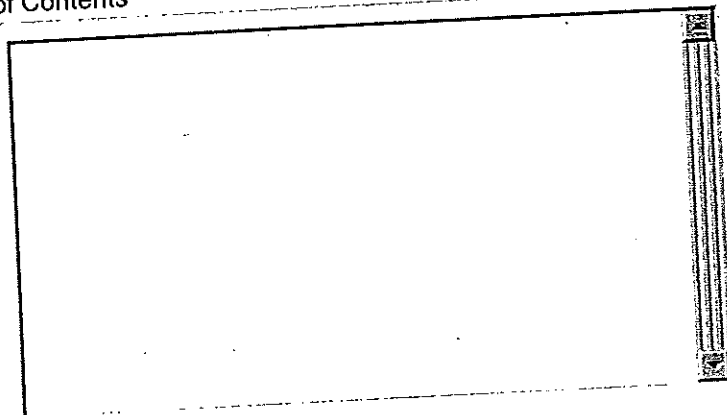
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(2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract;

(3) For cost-plus-award-fee contracts—

(i) The base fee established in the contract at the time of contract award;

(ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.

(4) For fixed-price-incentive contracts, the Government may—

(i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or

(ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.

(5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.

(c) The Government may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.

As prescribed in 3.808, insert the following provision:

CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (APR 1991)

(a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicita-

tion, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989—

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

(End of provision)

52.203-12 Limitation on Payments to Influence Certain Federal Transactions.

As prescribed in 3.808, insert the following clause:

LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 1997)

(a) *Definitions.*

"Agency," as used in this clause, means executive agency as defined in 2.101.

"Covered Federal action," as used in this clause, means any of the following Federal actions:

- (1) The awarding of any Federal contract.
- (2) The making of any Federal grant.
- (3) The making of any Federal loan.

(4) The entering into of any cooperative agreement.

(5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

"Indian tribe" and "tribal organization," as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

"Influencing or attempting to influence," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government," as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:

(1) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.

(2) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.

(3) A special Government employee, as defined in section 202, Title 18, United States Code.

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.

"Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation," as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment," as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient," as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe,

tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed," as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State," as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) *Prohibitions.* (1) Section 1352 of Title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(3) The prohibitions of the Act do not apply under the following conditions: (i) *Agency and legislative liaison by own employees.* (A) The prohibition on the use of appropriated funds, in paragraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action—

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(E) Only those services expressly authorized by subdivision (b)(3)(i)(A) of this clause are permitted under this clause.

(ii) *Professional and technical services.* (A) The prohibition on the use of appropriated funds, in paragraph (b)(1) of this clause, does not apply in the case of—

(1) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(2) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A)(1) and (2) of this clause are permitted under this clause.

(E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(c) *Disclosure.* (1) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (b)(1) of this clause, if paid for with appropriated funds.

(2) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes—

MEMORANDUM OF UNDERSTANDING

between

MONTGOMERY COUNTY, MARYLAND

and

GLEN ECHO PARK PARTNERSHIP FOR ARTS AND CULTURE, INC.

This Memorandum of Understanding (the "MOU") is entered into between MONTGOMERY COUNTY, MARYLAND, (the "County") and GLEN ECHO PARK PARTNERSHIP FOR ARTS AND CULTURE, INC. (the "Entity"), (the County and the Entity together the "Parties") on this 5th day of September, 2002.

BACKGROUND

1. Glen Echo Park, a unit of the National Park System located 1.5 miles northwest of Washington, D.C., in Montgomery County, Maryland, has served the region as a center for education, entertainment and cultural development for over a century.

2. The County entered into a cooperative agreement with the National Park Service ("NPS") dated June 7, 2002 (the "NPS Cooperative Agreement"), to implement the Modified Public Partnership Alternative identified in the Final Management Plan/Environmental Impact Statement for Glen Echo Park, issued in the Federal Register on March 9, 2001, and selected in the Record of Decision issued in the Federal Register on May 29, 2001.

3. Subsequent to entering into the NPS Cooperative Agreement, the County

designated the Entity to, among other things: a) manage and provide stewardship for Glen Echo Park as a center for educational, artistic, historical, cultural, environmental and recreational activities; b) market and promote Glen Echo Park to assure that the entire community, including persons of diverse racial, ethnic and socio-economic backgrounds, has access to the opportunities the park provides; c) promote and support both the study of and participation in the arts and humanities, history and environmental concerns; d) encourage effective working relationships, and active cooperation and collaboration, among individuals and organizations who provide programming within the park and between users of the park and surrounding communities; and e) ensure the long term success, financial and environmental sustainability of Glen Echo Park as an important community and national institution; and f) engage in any other activities which are not inconsistent with Section 501(c)(3) of the Internal Revenue Code.

4. The County's designation is stated in the Agreement between Montgomery County, Maryland and Glen Echo Park Partnership for Arts and Culture, Inc., dated September 5, 2002, a copy of which is attached to this MOU as **Exhibit A**, and incorporated as if fully set forth.

5. Pursuant to **Exhibit A**, the Entity shall serve as the County's designated management entity, as identified in the NPS Cooperative Agreement, to conduct the day-to-day operations at Glen Echo Park.

6. It is the County's intent to designate the Entity as, and the Entity desires to be, the management entity, as identified in the NPS Cooperative Agreement, Attachment B to **Exhibit A**, until June 30, 2017.

7. The term of **Exhibit A** expires on June 30, 2006, after which this MOU shall take effect. Thereafter, the Entity shall serve as the management entity, as identified in the NPS Cooperative Agreement, until June 30, 2017, subject to the terms and conditions of this MOU.

NOW, THEREFORE, in consideration of the foregoing premises and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties agree as follows:

I. Scope

A. The Entity shall serve as the County's designated management entity, as identified in the NPS Cooperative Agreement, to conduct the day-to-day operations at Glen Echo Park. During the Term of this MOU and so long as the agreement contained in **Exhibit A** is effective, the Entity may use the those parcels of land and Government improvements described in Appendix A to the NPS Cooperative Agreement, Attachment B to **Exhibit A** (the "Premises"), to conduct the operations authorized in this MOU and subject to **Exhibit A** and the NPS Cooperative Agreement.

B. The Entity will: a) manage and provide stewardship for Glen Echo Park as a

center for educational, artistic, historical, cultural, environmental and recreational activities; b) market and promote Glen Echo Park to assure that the entire community, including persons of diverse racial, ethnic and socio-economic backgrounds, has access to the opportunities the park provides; c) promote and support both the study of and participation in the arts and humanities, history and environmental concerns; d) encourage effective working relationships, and active cooperation and collaboration, among individuals and organizations who provide programming within the park and between users of the park and surrounding communities; e) ensure the long term success, financial and environmental sustainability of Glen Echo Park as an important community and national institution; and f) engage in any other activities which are not inconsistent with Section 501(c)(3) of the Internal Revenue Code.

C. The Entity must comply with all applicable provisions of the NPS Cooperative Agreement, which is attached as Attachment B to the NPS Cooperative Agreement, and is incorporated herein by reference as though fully restated.

D. As stated in the NPS Cooperative Agreement, the Entity must, among other things, do the following:

1. Develop, maintain, and administer programs and services occurring on Glen Echo Park in accordance with NPS guidelines, including, but not limited to, National Environmental Protection Act and National Historic Preservation Act.
2. Be aware of and agree to abide by all conditions of the NPS

Cooperative Agreement.

3. Carousel and Band Organ

a. Assume responsibility for the operation, routine maintenance, and staffing of the carousel and band organ at Glen Echo Park. The carousel and band organ may be operated four days per week, during appropriate weather conditions, from May 1 through September 30 of each year during the term of this MOU. The carousel and band organ may be operated four hours per day during two of the four days of operation per week, and six-and-one-half hours per day during the remaining two days of the four days of operation per week. The carousel and band organ may also be operated on another ten occasions, provided that no single occasion shall exceed more than four hours of use. No deviation from this operation schedule may occur without the prior approval of the NPS.

b. Submit the carousel for annual inspection prior to the opening of each carousel season.

c. Establish a fee structure for the public's use of the carousel and band organ. The Entity must submit the proposed fee structure to the NPS for approval.

d. Maintain and test, at least once a year, the fire suppression system, security alarm, and fire detection alarm at the carousel and band organ.

e. Deposit at least 20% of the annual gross revenue generated from the operation of the carousel band organ into an interest bearing account controlled by the Entity. The funds deposited into this account must be dedicated to the restoration and maintenance of the carousel and band organ.

4. Community Relations

a. Minimize impact of events and programming on adjoining communities through scheduling and public transportation improvements.

b. Obtain prior approval of the NPS before using federal property bounded by Tulane, Bowdoin, and Oberlin Avenues, as depicted on Figure 3-4 of the Final Management Plan/Environmental Impact Statement for Glen Echo Park, issued by the NPS in February 2001.

c. Obtain prior approval of the Town of Glen Echo before using town property bordering Tulane, Bowdoin and Oberlin Avenues.

5. Concessions

a. Provide Guest Services, Incorporated ("GSI"), the NPS' current concessioner, with an advance schedule of programs occurring in Glen Echo Park and the anticipated number of program participants, so that the concessioner will be prepared with a sufficient amount of food and refreshments to meet the anticipated need. With respect to catered events, the notice to GSI should be given at least two weeks prior to the catered event. With respect to major public events, the notice should be given at

least 30 calendar days prior to the event.

b. Ask the NPS to negotiate with GSI with respect to any foods or refreshments the Entity desires to have offered at Glen Echo Park. Alternatively, if permitted by NPS, the Entity will negotiate with GSI with respect to any foods or refreshments the Entity desires to have offered at Glen Echo Park.

6. Cooperating Association

a. The Entity may serve as a cooperating association subject to this MOU and the NPS Cooperative Agreement. Accordingly, the Entity may operate and staff the store at Glen Echo Park and supply inventory for the store.

b. The Entity may also oversee the sale of art by other cooperating associations. This oversight shall be in conjunction with the NPS' role under *Director's Order No. 32: Cooperating Associations*.

c. The Entity may also oversee the sale of educational materials by other cooperating associations. This oversight shall be in conjunction with the NPS' role under *Director's Order No. 32: Cooperating Associations*.

7. Copyright. Assure that copyright and licensing requirements are met with respect to performances occurring at Glen Echo Park.

8. Development, Maintenance, and Administration of Premises.

Develop, maintain, and administer the premises at Glen Echo Park in cooperation with the NPS. With respect to programmatic details, the Entity must:

- a. Develop programs and activities consistent with the NPS' goals for Glen Echo Park;
- b. Improve the diversity of program offerings and program participants; and
- c. Collect fees for program offerings, subject to the prior approval of the NPS.

9. Personnel. Provide all necessary personnel for the operation of its activities under this Memorandum of Understanding.

10. Public Participation. Provide the opportunity for public participation for a wide variety of affordable and accessible recreational and educational activities with both wide popular appeal and specialized appeal to different ethnic, age, cultural, and educational groups.

11. Resource Protection. Enhance the protection and preservation of cultural and historical resources at Glen Echo Park through the creation of an improved revenue structure, thereby making more funds available for such protection and preservation.

12. Security

- a. Secure, electronically or otherwise, all buildings, equipment, and facilities on the premises at Glen Echo Park, including, but not limited to, a final check at the end of each day and each event to ensure that: i) the lights are turned off; ii)

the doors are locked; iii) the water is turned off; and iv) the alarm system is properly set.

In the event the Entity must contact a law enforcement agency, the Entity must contact the United States Park Police at (202) 619-7310.

b. Develop, implement, and maintain a written Crime Prevention/Physical Security Plan approved by the NPS. This plan must identify responsibilities for, among other things: i) daily securing of buildings; ii) access to buildings and assignment of keys; iii) frequency of security patrols; and iv) emergency contacts.

c. Provide, if the NPS, the County and the Entity collectively agree, additional unarmed security for special events and programs extending beyond the normally prescribed hours. The United States Park Police must approve in writing any unarmed security prior to its being used at Glen Echo Park.

13. Signage. Design a uniform signage plan for the premises at Glen Echo Park. The signage plan is subject to the NPS' prior approval.

14. The Entity's obligations in the day to day management and operation of Glen Echo Park are specified in the NPS Cooperative Agreement. It is not the intent of the parties to exclude any of the provisions of the NPS Cooperative Agreement where those provisions have not been specifically stated, cited or referred to. It is the intent of the parties to identify certain portions of the NPS Agreement, acknowledging, however, that all of the provisions, conditions and requirements of the NPS Cooperative Agreement

apply with equal force and effect with respect to the Entity's obligations to the County under this MOU. In that regard, the parties agree that this MOU is subject to the NPS Cooperative Agreement.

II. The Entity's Fundraising Activities

In order to fulfill its obligations under this MOU, the Entity may seek funding from private foundations, individuals, corporations, and federal, state and county governments in connection with the development, maintenance, and administration of programs and services occurring at Glen Echo Park. The Entity's fund raising activities must be in accordance with its corporate charter and by-laws and further in accordance with all applicable federal and state laws. The Entity may also pledge or encumber the NPS Cooperative Agreement as security as provide under the NPS Cooperative Agreement, Article IV, Section A, subsection 13, "Pledging or Encumbrance of this Agreement."

III. Spanish Ballroom

The Entity will operate the Spanish Ballroom in accordance with the requirements of the NPS Cooperative Agreement, Article IV, Section A, subsection 16, "Spanish Ballroom."

IV. Life Cycle Maintenance

A. The Entity may also raise revenue through sales and business transacted at Glen Echo Park as authorized in the NPS Cooperative Agreement. The Entity must set aside a percentage of its "gross receipts" as that term is defined in the NPS Cooperative Agreement, in a life cycle maintenance account. Beginning in the fifth year of the Entity's operation at Glen Echo Park and or all subsequent years this Memorandum of Understanding is in effect, the Entity must set aside five percent of the Entity's "gross receipts."

B. The Entity must comply with all of the requirements of the NPS Cooperative Agreement, Article IV, Section A, subsection 8, "Life Cycle Maintenance Account," in collecting, maintaining, managing and expending the funds related to the Life Cycle Maintenance Account.

V. Maintenance

The Entity must physically maintain and repair all facilities used in its operations under this MOU and in accordance with **Exhibit A** and the NPS Cooperative Agreement.

The Entity's obligations with respect to maintenance shall be in accordance with the requirements of the NPS Cooperative Agreement, Article IV, Section A, subsection 9, "Maintenance."

VI. Term

Performance under this MOU shall commence upon the expiration of the Agreement contained in Exhibit A, unless the Agreement in Exhibit A is terminated, or on July 1, 2006. This MOU expires on June 30, 2017.

V. Limitation on Liability of County

The County is not liable for any obligation, act or omission of the Entity or its agents or employees. Any contract executed by the Entity must state that the County is not liable for any obligation of the Entity under the contract. The Entity is not liable for any obligation, act or omission of the County or its agents, contractors, subcontractors, or employees. The County is responsible for any loss, personal injury, death and any other damage (including incidental or consequential) that may be done or suffered by reason of the County's negligence or failure to perform any contractual obligations, PROVIDED, however, that the County's liability is subject to the notice requirements and damages caps stated in the Local Government Tort Claims Act, Md. Ann. Code Cts. & Jud. Proc. §§5-301 through 5-304 (1974, 1998 Repl. Vol.), any other applicable law, and subject to all applicable immunities the County enjoys.

VI. On-Site Visits and Inspection of Records

- A. The County has the right to monitor and inspect all services performed and

to make on-site visits at all reasonable times and places, including at the Entity's place of business, for the purpose of monitoring and evaluating the Entity's programs and operations, as well as to ensure compliance with all requirements under this MOU.

B. The County may inspect the Entity's records in connection with the Entity's performance under this MOU upon reasonable notice at a mutually convenient time and location.

VII. Limitations

In addition to any other limitation in this MOU and under applicable laws, the Entity must not: 1) pledge the full faith and credit of the County; 2) issue bonds or notes; 3) exercise any police power of the County, except those expressly authorized by law or in this Memorandum of Understanding; 4) exercise the power of eminent domain; 5) lease any property as a tenant for a term of years beyond the date of termination of the Entity; 6) purchase, sell, construct, or as a landlord, lease any real property; or 7) compete with the private sector, except as otherwise authorized by Montgomery County law, the Agreement in Exhibit A, this MOU, or any other applicable law.

VIII. Miscellaneous

A. This MOU shall be governed by the laws of Montgomery County, Maryland, and the State of Maryland. Any civil action brought to enforce the terms of

this MOU must be brought in a court of competent jurisdiction in Montgomery County, Maryland.

B. This MOU, the Agreement in **Exhibit A**, and the NPS Cooperative Agreement (and all attachments thereto) constitute the entire agreement of the Parties, and no other documents constitute the agreement of the Parties.

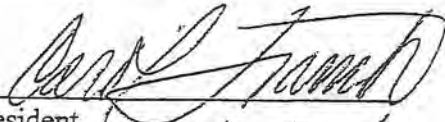
C. This MOU may only be amended by written agreement signed by the Parties.

D. If any part of this MOU is deemed unenforceable by a court of competent jurisdiction, that provision may be severed from this MOU and the remaining provisions remain in full force and effect.

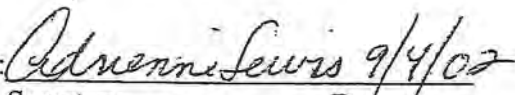
[SIGNATURES FOLLOW]

The Parties have executed this MOU on the date and year first written above.

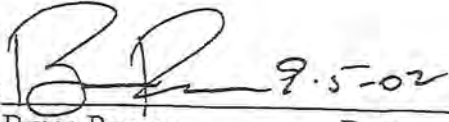
GLEN ECHO PARK PARTNERSHIP
FOR ARTS AND CULTURE, INC.

By: 
President
Carol Trannick
Printed Name

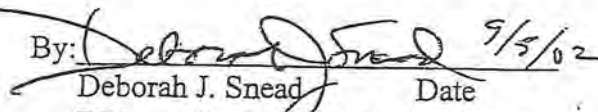
I hereby certify that the above-named person
is a corporate officer and empowered to sign
contractual agreements on behalf of Glen
Echo Park Operating Entity, Inc.


By:  9/4/02
Secretary Date

MONTGOMERY COUNTY,
MARYLAND

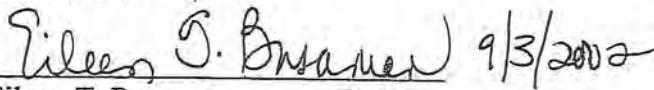
By:  9.5-02
Bruce Romer Date
Chief Administrative Officer

RECOMMENDED:

By:  9/5/02
Deborah J. Snead Date
Director, Bethesda-Chevy Chase
Regional Services Center

By:  9/5/02
Albert J. Genetti, Jr. Date
Director, Department of Public Works
and Transportation

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

By:  9/3/2002
Eileen T. Basaman Date
Assistant County Attorney